

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DARK CATT STUDIOS HOLDINGS, INC., a
Delaware corporation, and DARK CATT
STUDIOS INTERACTIVE LLC, an Illinois
limited liability company, *on behalf of themselves
and all others similarly situated,*

Plaintiffs,

v.

VALVE CORPORATION, a Washington
corporation,

Defendant.

CASE NO.: 2:21-cv-00872-JCC

**AMENDED CLASS ACTION
COMPLAINT**

**FOR DAMAGES AND INJUNCTIVE
RELIEF FOR:**

VIOLATION OF SECTION 2 OF THE
SHERMAN ACT (15 U.S.C. § 2) AND
WASHINGTON CONSUMER
PROTECTION ACT

JURY DEMAND

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1 Plaintiffs Dark Catt Studios Holdings, Inc. and Dark Catt Studios Interactive LLC
2 (collectively, “Dark Catt”) bring this antitrust action against Defendant Valve Corporation
3 (“Valve” or “Defendant”) under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, Section 4
4 of the Clayton Act, 15 U.S.C. § 15, and the Washington Consumer Protection Act, on behalf of
5 themselves and a class of similarly situated personal computer (“PC”) video game publishers
6 (collectively, “Publishers”), and allege as follows on personal knowledge as to themselves and
7 upon information and belief as to all others:

8 **I. INTRODUCTION AND NATURE OF THE CASE**

9 1. Dark Catt is a game developer that set out to make, market, and sell an exciting new
10 PC game. To reach customers, Dark Catt launched its game on Valve’s Steam gaming website.
11 PC game Publishers like Dark Catt have no viable choice but to publish and sell through Steam
12 because Valve uses its monopoly power to serve as the gatekeeper to PC game distribution and
13 therefore to PC game customers.

14 2. Dark Catt was required to and did pay Valve supracompetitive commissions on its
15 game sales, paying Valve 30% of the sales price on Steam plus other fees. All Publishers that
16 publish through Steam are likewise subject to Valve’s excessive and anticompetitive revenue share
17 requirement and other monopolistic practices that serve only to prevent competition. From at least
18 April 27, 2017 and continuing through the present until the effects of its scheme are eliminated
19 (“Class Period”), Publishers have suffered antitrust injury from Valve’s conduct.

20 3. Since Steam was launched in 2003, Valve has used a playbook of tactics to
21 wrongfully attempt to gain and/or wrongfully maintain a monopoly in the PC game distribution
22 market (defined below), extract anticompetitive rents from Publishers, and prevent other game
23 distribution stores from gaining a foothold to compete effectively in the market.

1 4. As a practical matter, Publishers must make their games available on Steam to have
2 any chance of reaching customers. Publishing on Steam is a threshold requirement if a Publisher
3 realistically is to succeed with its PC game. This includes even large and experienced Publishers.¹

4 5. Valve’s monopoly tactics harm hundreds of game Publishers and millions of game
5 buyers, all of whom pay monopoly rents to Valve in the form of, among other tributes, (a) inflated
6 revenue sharing on game sales (overcharges Valve imposes on all Publishers) or (b) potentially
7 inflated game sales prices (overcharges that may be paid by game buyers as a result of Valve’s
8 inflated commission rate).

9 6. Valve executes its scheme to gain and maintain its PC game distribution monopoly
10 in at least three principal ways, each of which is intertwined with and amplified by the others.

11 7. **First**, Valve extends its reach beyond its own Steam store; it controls Publishers’
12 activities—including their pricing and marketing, such as minimum pricing and exclusive
13 offerings (“*exclusives*”)²—on other, third-party storefronts competing to sell the same games
14 available on Steam. For example, Valve instructs Publishers not to “give Steam customers a worse
15 deal” when Publishers publish and sell their games through other stores. Valve makes clear that
16 Publishers cannot offer lower pricing or discounts to customers on other stores that are not also
17 made available to Steam customers. Rather than lowering prices to Steam customers, Valve’s “no
18 worse deal” requirement has the effect of reducing price competition and potentially raising game
19 prices.

20 8. Almost all Publishers pay a 30% commission to Valve on each sale of their games
21 on Steam. In the absence of Valve’s restrictions, Publishers would be able to publish, market, and
22 sell their games on *better terms* than they receive from Valve and potentially for *lower prices* to
23

24 ¹ The one notable exception is Activision Blizzard. Other multi-billion-dollar studios with
25 their own stores to self-distribute games, such as Electronic Arts and Ubisoft, also publish their
games on Steam.

26 ² Exclusive offerings generally involve (a) limited releases of a game or update, either for a
27 specified time or permanently, to one storefront; or (b) special values for a game, such as bundles
where the game is free with the purchase of hardware.

1 *consumers* than consumers pay on Steam. Indeed, Publishers could and would make more money
2 from each sale because other storefronts commonly offer lower revenue sharing commitments than
3 those imposed by Steam and may offer financial incentives for temporary exclusive offerings.
4 Publishers would keep a larger percentage of each sale, which may also allow them to either offer
5 a lower sales price to consumers without sacrificing profits and/or pour more money into upgraded
6 and new games. Publishers also may sell more copies of games if they offer a lower price,
7 increasing total profits.

8 9. Additionally, competing storefronts would be able to gain traction in the industry
9 by attracting customers through lower pricing and/or exclusive offerings, and compete for
10 Publishers by offering better distribution terms. Increased competition in PC game distribution
11 would result in greater exposure for Publishers' games, more money to Publishers, more choices
12 for Publishers and consumers, more innovation, and/or potentially lower prices for consumers,
13 among other benefits. Valve's pricing and marketing restrictions exclude competition.

14 10. ***Second***, Valve uses its system of authorization numbers called "Steam keys" to
15 enforce its restrictive pricing and marketing terms and to control Publishers.

16 11. Steam keys are crucial to the PC gaming industry from pre-commercialization beta
17 testing of new games, to media and influencer publicity, to post-release expansion onto third-party
18 stores. Steam keys are the industry standard for distributing authorized, licensed copies of PC
19 games in these and other critical contexts.

20 12. The critical need for access to Steam keys compels Publishers to follow Valve's
21 restrictive pricing and marketing terms, as Steam will and has cut off access to Steam keys for
22 Publishers who violate Steam's anticompetitive, restrictive terms. Given Steam's market power,
23 this has the effect of foreclosing those Publishers from the wider PC game distribution market and
24 from access to PC gaming customers.

25 13. Although Valve does not receive a commission on Steam keys sales on third-party
26 stores, it receives other valuable benefits from offering Steam keys to Publishers and ensuring the
27 PC game distribution market remains reliant on Steam and industry-standard Steam keys.

1 14. In other words, Steam keys are not a complementary service Valve decided to offer
2 to Publishers but a way to use an essential industry standard to lock Publishers into the Steam
3 store, enforce Valve's anticompetitive pricing and marketing restrictions, ensure sales for any
4 given game remain higher on Steam than third-party stores, lock gamers into Steam rather than
5 using other services, collect game pricing and sales information on other stores, and punish
6 Publishers who take any action perceived as against Valve's interests.

7 15. When a customer purchases a Steam key on a third-party store, the customer is
8 directed away from the purchase site back to Steam to access and play the purchased game. The
9 other site loses the ability to gain traction in the market (by keeping the customer on its site) while
10 Valve earns a commission on future add-on content that the customer purchases to enhance the
11 gameplay, collects Steam key usage and other data concerning Publishers' sales through other
12 stores, and collects data about customers' gameplay practices and preferences.

13 16. Valve also limits the sales Publishers can make through third-party stores selling
14 Steam keys by limiting the number of Steam keys it will authorize to a quantity lower than the
15 Publisher's sales on Steam. In other words, Valve's policies ensure that Steam will always sell
16 more games than all other stores selling Steam keys combined. Further, Valve arbitrarily delays
17 and denies requests for Steam keys to punish Publishers for selling their games at lower prices or
18 offering exclusives on other stores. Valve's control over and use of Steam keys excludes
19 competition.

20 17. **Third**, Valve uses its control of the publicity and visibility of games on the Steam
21 store to keep Publishers in check and maintain its monopoly power in PC game distribution.
22 Valve's Steam store review system punishes Publishers that threaten Steam's power or control.

23 18. Valve's selective policing of its user reviews is a further tool Valve uses to coerce
24 Publishers. Malicious negative reviews can result in a game, or Publisher, being banned from
25 Steam, and yet Steam declines to enforce its policies against such negative reviews when a
26 Publisher is deemed to have acted against Valve in some way. Due to Valve's monopoly, a game
27 not available on Steam has little chance of commercial success.

1 19. Steam’s loyal and zealous user base will post baseless negative reviews for certain
 2 Publishers’ games on the Steam store, often due to the Publishers’ use of alternative distribution
 3 sites. When done in large numbers, the succession of negative reviews is called “review
 4 bombing.”³ These negative reviews do not address the quality of the game or its technical
 5 performance; they instead reflect users’ displeasure with the Publisher.

6 20. While unrelated to the game, the volume of negative reviews can have devastating
 7 results for future sales and can bury the game among thousands of others in search results and
 8 recommendations. The reviews can result in less visibility and lower sales for Publishers and
 9 Publishers unjustifiably being banned from Steam altogether.

10 21. Valve fails to remove negative reviews for Publishers it opaquely determines to
 11 have acted against Valve in some way, such as by running a promotion on another storefront,
 12 though the content of the reviews violate its terms of use. Thus, Valve’s use of the Steam review
 13 system is a powerful tool in its control over Publishers’ pricing, publishing, and marketing on other
 14 sites. Valve’s implementation of its review system bolsters its actions to exclude competition.

15 22. **Impact:** Valve’s anticompetitive practices have exploited the plaintiff class of
 16 Publishers, who find themselves reliant on Steam’s massive user base and locked into publishing
 17 and selling their games on Steam. Valve imposes on Publishers abusive contractual provisions
 18 and unjustified pricing and marketing restrictions, as well as employing industry standard and
 19 necessary Steam keys in ways that enhance its market position and exclude competition, while
 20 instilling in Publishers a well-grounded fear of retaliation. Publishers are forced to pay Valve a
 21 supracompetitive fee, in the form of an inflated revenue share percentage, and are blocked from
 22 entering more favorable and procompetitive arrangements with other stores.

23
 24
 25 ³ “Review bombing is the practice of flooding a digital review service with negative
 26 feedback, to artificially lower an item’s overall rating. It’s a practice used frequently in the gaming
 27 industry, though it’s by no means exclusively there.” Rachel Kaser, *Game review bombs are here
 28 to stay – so let’s use them for good*, The Next Web (Mar. 4, 2019), <https://thenextweb.com/gaming/2019/03/04/game-review-bombing-steam-good-bad/>.

23. Valve's practices have also harmed others not party to this lawsuit, including Valve's would-be competitors, third-party storefronts like Epic Games Store, Electronic Arts' ("EA") Origin, and the Microsoft Store, which have been consistently unable to make incursions on Steam's market share despite pursuing more efficient business models and offering more favorable opportunities for Publishers.

24. Valve's practices have also harmed PC gaming consumers, who are now injured to Steam and denied the benefits of the higher quality, higher quantity, and/or cheaper PC games, and additional and more innovative stores and portals for playing PC games that they would receive in a competitive marketplace.

25. Dark Catt brings this action on behalf of itself and a putative class of Publishers in the public interest and to redress Valve's abuse of its market power to attempt to monopolize and maintain its monopoly in the PC game distribution market. Valve attempts to monopolize and maintains its monopoly through the Steam Distribution Agreement ("SDA") that all Publishers must sign to publish a game on Steam and the Steamworks Documentation terms (as Valve interprets and enforces them), as well as the other anticompetitive practices described herein, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2) and the Washington Consumer Protection Act (RCW 19.86).

II. PARTIES

26. Plaintiff Dark Catt Studios Holdings, Inc. ("DCS Holdings") is a multimedia production company and development studio with a focus on film, animation, and narrative media forms. It is incorporated in the State of Delaware with its principal place of business in Illinois.

27. Plaintiff Dark Catt Studios Interactive LLC ("DCS Interactive") is a wholly owned subsidiary of DCS Holdings and specializes in PC software, gaming, interactive content, and experiences. It is formed under the laws of the State of Illinois and has its principal place of business in Illinois.

28. DCS Holdings contracted with Valve under the SDA during the Class Period. DCS Interactive created a PC game and made it compatible with Steam by incorporating the

1 Steamworks software development kit (“SDK”), subjecting it to the Steamworks Documentation
2 rules. Dark Catt therefore contracted with Valve under the SDA and the rules governing use of
3 Steamworks. DCS Interactive, bound by the terms of its parent DCS Holdings’ contracts with
4 Valve and the Steamworks Documentation, published its game for sale on Steam, sold its game to
5 consumers on Steam, and paid various sums to Valve, including Valve’s mandatory 30% revenue
6 share on game sales on Steam.

7 29. Defendant Valve Corporation is a game developer, hardware manufacturer, and
8 digital content distributor. It is the world’s largest PC game distributor. Valve Corporation is
9 incorporated in the State of Washington and has its principal place of business at 10900 NE 4th
10 Street, Suite 500, Bellevue, Washington 98004. It operates the Steam store, distributes PC games
11 online, and, among other conduct, contracts with PC video game publishers through the SDA and
12 Steamworks Documentation.

13 III. JURISDICTION AND VENUE

14 30. The United States District Court for the Western District of Washington has
15 subject-matter jurisdiction under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) & 26)
16 and 28 U.S.C. § 1331 and 28 U.S.C. § 1337, because this action arises under Section 2 of the
17 Sherman Act (15 U.S.C. § 2). The Court has supplemental jurisdiction for the Washington state
18 law claim under 28 U.S.C. § 1367.

19 31. The United States District Court for the Western District of Washington has
20 personal jurisdiction over Defendant under 15 U.S.C. § 22, because Valve Corporation is a resident
21 of the Western District of Washington and, *inter alia*: (a) transacted business throughout the
22 United States, including in the Western District of Washington; (b) contracted with Publishers
23 within the United States, including in the Western District of Washington; (c) had substantial
24 contacts within the United States, including in the Western District of Washington; and/or (d) was
25 engaged in an illegal anticompetitive scheme that was directed at and had the intended effect of
26 causing injury to persons residing in, located in, or doing business throughout the United States,
27 including in the Western District of Washington.

32. Venue is proper in the United States District Court for the Western District of Washington because a substantial part of the events giving rise to Dark Catt's claim occurred in this District and a substantial portion of the affected interstate trade and commerce was carried out in this District, as provided in 15 U.S.C. § 22 and 28 U.S.C. § 1391(b), (c), and (d). Further, Valve selected the courts in King County, Washington, as the venue for disputes arising under, in connection with, or incident to the SDA.

IV. ANTITRUST LAWS

33. Section 2 of the Sherman Act (15 U.S.C. § 2) makes it unlawful for any person to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States."

34. Section 2 makes it illegal to acquire or maintain monopoly power through improper means. The offense of monopolization has two elements: (1) the possession of monopoly power in the relevant market, and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

35. The offense of attempted monopolization has three elements: (1) anticompetitive conduct; (2) a specific intent to monopolize; and (3) a dangerous probability of success, *i.e.*, achieving monopoly power.

36. Monopoly power is the power to control prices or exclude competition and can ordinarily be inferred from a dominant share of the relevant market.

37. The monopoly power must be accompanied by some element of exclusionary conduct that harms competition in the relevant market.

38. The overall combined effects of a monopolist must be considered, rather than specific individual acts, to determine if the conduct violates the Sherman Act.

39. A specific intent to monopolize entails an intent to destroy competition or build monopoly.

40. The dangerous probability of achieving monopoly power is determined by evaluating the relevant market and the ability to lessen competition in that market. The defendant is not required to have monopoly power, and the minimum showing of market share required is a lower quantum than the minimum showing required for an actual monopolization claim.

41. Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) authorize any person (including Dark Catt) injured in its business or property by reason of the antitrust law violations alleged in this complaint to sue in this Court for damages sustained thereby, and the costs of suit, including a reasonable attorney's fee, as well as for injunctive relief, and Dark Catt invokes this statutory authority for this action.

42. The Washington Consumer Protection Act (RCW 19.86) prohibits unfair methods of competition and unfair or deceptive practices in the conduct of trade or commerce. The offense has five elements: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to the plaintiff in his or her business or property; and (5) causation.

V. BACKGROUND ON STEAM

A. Valve Has Built and Maintained a Monopoly in PC Game Distribution

43. Founded as Valve, LLC in 1996 and incorporated as Valve Corporation in 2003, Valve started as a video game developer and publisher, with games such as the Half-Life, Portal, and Counter-Strike franchises.

44. A significant shift in Valve's business occurred after its creation of Steam in 2003.⁴ Steam originally served as a software client for Valve's own games, allowing it to distribute game patches for online games; it also included anti-piracy and anti-cheat measures. Valve released Half-Life 2 in November 2004 and required the Steam client to be installed on the user's PC to

⁴ *About Us*, Valve Corporation, <https://www.valvesoftware.com/en/about> (last accessed Dec. 17, 2021) ("We created Steam in 2003 to serve as a digital content distribution channel, before app stores existed.").

1 play the game, even if the customer purchased a physical copy of the game. Customers could not
2 play the game unless they created a Steam account and installed Steam on their PC.

3 45. Through this “[f]orced adoption” to play Half-Life 2, Valve started to build its
4 “stranglehold on the PC gaming market.”⁵ Valve began contracting with third parties to digitally
5 distribute their games on Steam in exchange for a cut of the revenues. There are now at least
6 50,000 games available on Steam, and the vast majority are third-party games.⁶

7 46. Valve’s success as a company has largely tracked the growth of Steam. In 2005,
8 *Forbes* estimated that Valve had grossed \$70 million. As of 2012, the company was worth over
9 \$3 billion, and Steam had doubled its sales for each of the prior seven years.⁷ *Forbes* noted in
10 2012 that more than half of Valve’s revenue came from selling games over Steam and “lack of
11 competition allowed it to seize as much as 70% of the market.”⁸ In 2011, Valve Chief Executive
12 Officer Gabe Newell called Valve “tremendously profitable” and asserted that, with only 250
13 employees, it was more profitable per employee than Google or Apple.⁹ At that time, its estimated
14 value was \$2 billion to \$4 billion, and its market share was “half to 70%” of the market.¹⁰

15 47. Valve has continued to grow rapidly. As of 2019, Valve’s market capitalization
16 had ballooned to \$10 billion. In 2017, Steam generated over \$4.3 billion worth of sales, not
17

18 ⁵ J. Conditt, *‘Half-Life: Alyx’ is proof Valve answers to no one*, Engadget (Mar. 18, 2020),
19 <https://www.engadget.com/2020-03-18-half-life-alyx-valve-steam-stockholders-boo.html>
20 (“Valve forces players to use specific platforms, shuts down revenue streams for developers, and
shows little interest in building the games and sequels that fans are desperate to play. The
company consistently offloads its moderation duties . . .”).

21 ⁶ Dustin Bailey, *Steam Just Reached 50,000 Games Listed*, PCGamesN (Feb. 12, 2021),
22 <https://www.pcgamesn.com/steam/total-games>.

23 ⁷ David Ewalt, *Valve’s Gabe Newell Is the Newest Video Game Billionaire*, *Forbes* (Mar. 7,
24 2012), <https://www.forbes.com/sites/davidewalt/2012/03/07/valve-gabe-newell-billionaire/?sh=736ce53d6d19>.

25 ⁸ *Id.*

26 ⁹ Oliver Chiang, *The Master of Online Mayhem*, *Forbes* (Feb. 28, 2011),
27 <http://www.forbes.com/forbes/2011/0228/technology-gabe-newell-videogames-valve-online-mayhem.html>.

28 ¹⁰ *Id.*

including in-game purchases and downloadable content (“DLC”), which are also significant sources of revenue.¹¹ It is estimated to continue to make billions of dollars in revenue for Valve each year.¹² Steam remains Valve’s largest source of revenue because Valve collects a percentage of every sales transaction amount for sales of third-party games, DLC, in-game purchases, and other transactions.

48. Before October 1, 2018, Valve’s commission for all sales on Steam was 30%, meaning Valve received 30% of the purchase price for any sale of a PC game on Steam. Effective October 1, 2018, Valve modified the revenue share to include three tiers, with lower commission rates once a game hits \$10 million and \$50 million in sales.

49. Valve has developed and published only one PC game since 2017, relying instead on the billions of dollars in revenue Steam generates.¹³

50. Valve, through Steam, is the world’s largest distributor of PC games, holding approximately 75% of the global market.¹⁴ In 2020, Steam recorded 120 million monthly active players, 25 million peak concurrent users, and 2.6 million new purchases per month.¹⁵ It has over one billion user accounts.¹⁶

¹¹ Joel Hruska, *Steam Earned an Estimated \$4.3B in 2017, but Benefits Flow to Handful of Titles*, ExtremeTech (Mar. 26, 2018), <https://www.extremetech.com/gaming/266323-steam-earned-estimated-4-3b-2017-benefits-flow-handful-titles>; Arthur Zuckerman, *75 Steam Statistics: 2020/2021 Facts, Market Share & Data Analysis*, Compare Camp (May 15, 2020), <https://comparecamp.com/steam-statistics>.

¹² Conditt, *‘Half-Life: Alyx’ is proof Valve answers to no one*, *supra* note 5.

¹³ Valve also released a free-to-play virtual card game in 2018, which is no longer supported and widely considered a failure, and a free-to-play offshoot of its Dota 2 game in 2020, which is based on a community-created game mode for Dota 2 that an independent publisher released commercially in 2019.

¹⁴ Zuckerman, *75 Steam Statistics*, *supra* note 11; Hruska, *Steam Earned an Estimated \$4.3B in 2017*, *supra* note 11 (“With 80 percent+ of the game distribution market, Steam has a lock on gaming that no other media outlet has ever enjoyed.”).

¹⁵ Valve Corporation, *Steam – 2020 Year in Review* (Jan. 13, 2021), <https://store.steampowered.com/news/group/4145017/view/2961646623386540826>.

¹⁶ *Id.*

51. Epic Games Store, Steam's largest competitor, sold approximately \$265 million worth of third-party games in 2020, compared to the billions of dollars' worth of third-party games sold by Steam.¹⁷

52. In making itself central to PC gaming distribution and sales, Valve has monopolized and/or attempted to monopolize the PC game distribution industry. Valve has already reaped a substantial reward for its early development of a digital distribution system that can support third-party applications. It is now using a variety of tactics to enhance and maintain its monopoly power, ensuring that Publishers and customers remain dependent on it and foreclosing would-be competitors from the PC game distribution market.

B. Publishers Must Have Access to Steam and Steam Keys to Meaningfully Participate in the Market

53. Due to Steam's market dominance and exclusion of potential rivals, Publishers must have their game on Steam to have sufficient access to the market and an opportunity to generate revenue. Publishers also need to have their game on Steam to have access to Steam keys, which have become the industry standard for distributing licensed copies of a game.

54. While other stores, both digital and physical, were or are selling PC games during the Class Period, they predominantly were or are selling access to games through Steam keys. Even in retail stores, PC game boxes often contain a Steam key activation code rather than a physical disk. There is little to no physical distribution of PC games anymore. Likewise, many digital stores are also selling Steam keys rather than a version of the game built for a different game client.

55. Thus, these alternative stores do not provide Publishers a PC game distribution channel independent of Steam and outside of Valve's control, nor do they provide a sufficient competitive constraint on Valve. The lack of other options preceding and during the Class Period is not due to Steam's superiority as a digital store or content delivery network but from Valve's

¹⁷ Epic Games, Inc., *Epic Games Store 2020 Year in Review* (Jan. 28, 2021), <https://www.epicgames.com/store/en-US/news/epic-games-store-2020-year-in-review>.

1 successful foreclosure of competition through restrictions on Publishers and enforcement of those
2 restrictions to keep Publishers dependent on and loyal to Steam.

3 56. Valve has entrenched its position as a monopolist in PC game distribution and
4 foreclosed rivals so successfully that virtually all Publishers have no feasible path to market
5 without going through Steam.

6 57. Almost all game developers lack the resources to establish and maintain their own
7 digital storefront, including the ability to combat credit card fraud that is rampant in the industry.
8 It also takes significant resources to establish the content delivery network and digital rights
9 management (“DRM”) tools necessary to distribute a Publisher’s game(s).

10 58. For example, after Tiny Build began investing in games in addition to its internal
11 development of games, it attempted to run its own store to avoid Steam’s pricing restrictions and
12 revenue share. It closed down after just a few months due to crippling credit card chargebacks.

13 59. The few stores that offer their own gaming client and content delivery system are
14 not options for many Publishers because (a) they only host and sell their own games; (b) they only
15 take high-profile games or games with a proven sales record to draw gamers from Steam, while
16 using Steam sales as a barometer of success; or (c) they offer only DRM-free games, meaning
17 Publishers do not have any anti-piracy protections.

18 60. This is the same problem facing any seller without its own retail stores or digital
19 store, regardless of industry. In the past, game developers sold, and may still sell, physical copies
20 of PC games through big-box stores like Best Buy, Target, and Wal-Mart, and specialty stores like
21 GameStop. Consistent with the shift to digital, physical retailers sell product boxes that contain
22 digital download codes rather than a disk. PC games are now primarily purchased online and
23 Publishers must be able to sell games online to reach consumers.

24 61. Other seemingly independent stores are selling Steam keys, requiring a Publisher
25 to distribute its game on Steam and reach a threshold number of sales on Steam to be granted
26 Steam keys at Valve’s discretion.

62. These stores pale in comparison to Steam. In 2018, Green Man Gaming disclosed annual revenue of £47.5 million (about \$60 million) for 2017, with 4.7 million registered users and 1 million active customers. It estimated it had less than 1% of the market.¹⁸ Humble Bundle's annual revenues are estimated at \$10 to \$50 million.¹⁹ GOG's annual revenues reportedly were approximately 343.7 million PLN (about \$90 million) in fiscal year 2020, up from about 162 million PLN (about \$42 million) in 2019.²⁰

63. Even if Publishers could overcome the financial and other barriers to entry, it would be almost impossible to attract a user base due to Valve's monopoly power and anticompetitive conduct to prevent new entry and expansion. Gaming behemoths like EA have been unable to gain sufficient market share in the PC game distribution market because of Valve's conduct to control pricing and remove marketing strategies that Publishers and competing stores could use to attract and retain game buyers.

64. As EA, a multi-billion-dollar AAA game studio,²¹ explained, it has to put its games on Steam to be "where the players are"—self-distribution through its own store was insufficient to compete despite the popularity of its games.²² The players are all on Steam because of Valve's anticompetitive conduct to foreclose alternative distribution channels and keep Publishers reliant on Steam and Steam keys to reach customers.

¹⁸ Christopher Dring, *Green Man Gaming's £100m IPO: "We've grown between 25 to 30% every year,"* gameindustry.biz (Sept. 4, 2018), <https://www.gamesindustry.biz/articles/2018-09-04-green-man-gamings-100m-ipo-weve-grown-between-25-to-30-percent-every-year>.

¹⁹ Dun & Bradstreet, *Humble Bundle, Inc.*, https://www.dnb.com/business-directory/company-profiles/humble_bundle_inc.flc7df9bcc19197f91c497215ca8adaa.html (last accessed Dec. 17, 2021).

²⁰ CD Projekt, *CD Projekt Group FY 2020 Earnings* at 20 (April 22, 2021), <https://www.cdprojekt.com/en/wp-content/uploads-en/2021/04/fy-2020-presentation.pdf>

²¹ "AAA studio" is an informal characterization that applies to large game studios with multi-million-dollar development and marketing budgets. They are usually assumed to have the highest quality and most sophisticated games.

²² Chaim Gartenberg, *EA games are returning to Steam along with the EA Access subscription service*, The Verge (Oct. 29, 2019), <https://www.theverge.com/2019/10/29/20937055/ea-games-steam-access-subscription-service-pc-storefront-jedi-fallen-order-sales>.

1 65. Valve uses restrictive terms in its SDA and Steamworks Documentation, and other
2 tactics described herein, to foreclose competition in the market for PC game distribution, ensuring
3 that the vast majority of PC game sales go through Steam and accordingly are subject to Valve's
4 supra-competitive commission rate.

5 **C. Valve Has Made Steam Keys the Industry Standard**

6 66. A Steam key is simply a product authorization code Valve generates that provides
7 access to a game hosted on Steam. Steam keys are alphanumeric codes that provide a way to
8 authenticate users and grant a game license to valid purchasers.

9 67. The Steam key system and Steam infrastructure allowed game studios to distribute
10 and sell online in addition to physical copies sold in stores. But Valve is now protecting the
11 position of Steam keys as the standardized authentication system in the PC gaming industry—
12 necessarily relied on by Publishers, distributors, gamers, and the media—through abusive use of
13 its market power and restrictive contract provisions.

14 68. Publishers can use Steam keys to sell copies of a Steam-compatible game through
15 another store, provide promotional access to media and industry insiders, run small beta tests of
16 games still in development, or provide access to developers working on the game. A Publisher
17 must request Steam keys from Valve and Valve has sole discretion to approve the requests.

18 69. Some third-party stores like Green Man Gaming and Humble Bundle are authorized
19 retailers of Steam keys. There are also unauthorized and unlicensed Steam key resellers (*e.g.*,
20 G2A, Kinguin) operating in a gray market, some by selling both legitimate and improperly
21 obtained keys. The sources of these keys vary, including an individual who (a) bought a legitimate
22 bundle but did not want one of the included games; (b) purchased in bulk during a Steam sale to
23 then resell at profit once the sale concluded (a violation of Steam's terms of service); (c) purchased
24 Steam keys illegally with stolen credit card information; or (d) posed as a member of the press to
25 obtain a free promotional demonstration key.

26 70. Publishers also rely on Steam keys to promote their games, including to provide
27 free access to media or to market a game to a larger publisher that might be interested in investing
28

1 in the game. PC game investors, distributors, and publishers require Steam keys, as the industry
 2 standard, to evaluate a game for possible funding, marketing support, or distribution, and industry
 3 media require Publishers to provide Steam keys to trial games. These entities will accept only
 4 Steam keys, rather than, for example, an .exe file, to protect themselves from alleged violations of
 5 nondisclosure agreements or intellectual property protections.

6 71. Steam keys allow Valve to entrench itself as the industry standard game client and
 7 authorization system and keep Publishers dependent on Valve for any meaningful access to the PC
 8 game distribution market. Valve's control over and use of Steam keys excludes competition.

9 **D. Valve Contracts with Publishers Through the SDA and Steamworks**
 10 **Documentation**

11 72. Publishers contract with Valve to publish their games on Steam via the SDA. Valve
 12 also includes extensive rules throughout the Steamworks Documentation that governs the use of
 13 the Valve software necessary to make a game compatible with Steam.

14 73. Steamworks is "a set of tools that enable you to distribute your product to Steam
 15 customers and a set of features you can use in your product."²³ To publish a game on Steam, a
 16 Publisher must create a Steamworks developer account. As part of the account creation process,
 17 the Publisher must agree to the form SDA. The Publisher must also pay a \$100 Steam Direct fee
 18 for each product the Publisher wishes to distribute on Steam.

19 74. The Publisher can then download the Steamworks SDK, which contains "all the
 20 scripts and templates for building and uploading your product to Steam."²⁴ The Steamworks SDK
 21 tools ensure a game is compatible with Steam, and use of the SDK is required to make a game
 22 available for sale on Steam. One component, called SteamPipe, is required to upload content to
 23 Steam, making use of Steamworks mandatory for a Publisher to publish and sell its game on
 24

25
 26 ²³ Valve Corporation, *Getting Started*, <https://partner.steamgames.com/doc/gettingstarted>
 (last accessed Dec. 17, 2021).

27 ²⁴ *Id.*

1 Steam.²⁵ All Publishers therefore must become “Steamworks partners” to publish their games on
 2 Steam and must abide by the Steamworks Documentation, in addition to the terms of the SDA.

3 75. The Steamworks Documentation is part rulebook and part instruction guide. Valve
 4 includes extensive rules throughout the Steamworks Documentation that are binding on
 5 Publishers. The SDA also requires Publishers to make their games compatible with any
 6 Steamworks features used, including complying with the rules in the Steamworks Documentation,
 7 and otherwise references and incorporates the Steamworks requirements.²⁶

8 76. The Steamworks rules are equally binding on Publishers as the terms in the SDA
 9 but provide Valve the flexibility to change the terms without amending the contract. For example,
 10 Valve changed its Steam key request process in April 2018 to provide Valve more control over
 11 Steam keys by updating the Steamworks Documentation on Steam Keys.²⁷

12 77. Several provisions of the SDA require Publishers to provide Valve the best pricing
 13 and availability for games and add-on content. Likewise, the Steamworks Documentation
 14 prohibits Publishers from offering a game at a lower price on another store. These restrictions are,
 15 in practice and effect, a type of Most Favored Nation (“MFN”) provision preventing price
 16 competition between storefronts. The MFN also keeps Publishers on Steam because they may not
 17 monetize their game or DLC at a better rate on another store or use game or DLC exclusives to
 18 attract customers to another store, which would ultimately put competitive pressure on Valve’s
 19 market power.
 20

21 ²⁵ Valve Corporation, *Steamworks SDK*, <https://partner.steamgames.com/doc/sdk> (last
 22 accessed Dec. 17, 2021); Valve Corporation, *Uploading to Steam*, [https://partner.steamgames.com/
 23 doc/sdk/uploading](https://partner.steamgames.com/doc/sdk/uploading) (last accessed Dec. 17, 2021).

24 ²⁶ SDA §§ 2.2, 11. Steamworks is defined as “those Steam services and features described
 25 on the Steamworks partner website found at <https://partner.steamgames.com/> and any other
 features and services that Valve decides, in its sole discretion, to make available to Steam
 Account Owners and/or Company as part of Steamworks.” *Id.* § 1.19.

26 ²⁷ Valve Corporation, *New Steam Key Request Wizard for Steamworks Developers* (Apr. 5,
 27 2018), [https://steamcommunity.com/groups/steamworks/announcements/detail/
 28 1652133167126418778](https://steamcommunity.com/groups/steamworks/announcements/detail/1652133167126418778).

1 had the power to exclude potential competitors from the PC game distribution market, harming
2 Publishers and potentially PC gaming customers.

3 83. As an initial matter, PC games are not reasonably interchangeable with console
4 games or mobile games. PC games are only playable on personal computers and are not
5 compatible with game consoles (*e.g.*, Microsoft Xbox, Sony PlayStation) or mobile devices. The
6 consumer needs the appropriate hardware: PCs, consoles, and mobile devices have uses beyond
7 gaming that affect their cost and value to the consumer.

8 84. Games made for consoles or mobile apps are not economic substitutes for games
9 made for PCs. Other factors drive consumers' preferences. PC, console, and mobile offer different
10 user experiences and game functionality, which are significant considerations for a consumer
11 deciding to purchase PC games.

12 85. Customers view PC, console, and mobile gaming as economic complements, rather
13 than substitutes, because they have different use cases. A PC game can support richer graphics
14 and greater memory requirements than a console game or mobile game. Mobile devices in
15 particular present processing limitations for games, making the complex animation, code,
16 color/lighting, and audio files featured in most PC games impossible to match.

17 86. PC games are generally played using a keyboard and/or mouse, providing more
18 reactive controls than console games using handheld controllers or mobile apps using the mobile
19 device's touchscreen. Playing a game using a keyboard and/or mouse sitting in front of a PC is a
20 wholly different playing experience than using a console connected to a television or an app
21 installed on a small mobile device. The consumer needs different hardware to run a PC game, a
22 console game, and a mobile game.

23 87. The same titles are generally not available across PC, console, and mobile
24 platforms, due in part to the different gameplay experiences and capability of the hardware.

25 88. Because of the differences in the gameplay experience, the cross-elasticity of
26 demand between PC games and console games is low, and consumers will not respond to a small
27 but significant price change for a PC game by purchasing a console game instead. There are
28

1 thousands more games available for PCs than game consoles. Steam has over 50,000 games
 2 available, while Xbox One, PlayStation 4, and Nintendo Switch each have around 3,000 games.²⁹
 3 PC games also retail at lower average prices than console games, and the pricing difference is
 4 compounded by frequent sales on PC game digital stores. (The need to purchase the gaming
 5 console itself additionally affects cost-of-ownership disparities.)

6 89. The cross-elasticity of demand between PC games and mobile games is even lower
 7 as most mobile games are free to play (and supported by ads or in-game purchases). When they
 8 do have a retail price, these prices are generally lower than PC games. According to a market
 9 researcher, of the 2.6 billion mobile gamers in 2020, about 38% paid for games, and 98% of mobile
 10 gaming revenues were from in-game transactions rather than a purchase price.³⁰

11 90. Consumers generally will not switch to a mobile game designed to be played in
 12 shorter intervals and “on the go” in response to a price increase of a PC game. Likewise, PC game
 13 consumers will not switch to mobile games in response to output decreases of PC games.

14 91. Given the differences in the games themselves, PC game distribution also differs
 15 from distribution models used for console and mobile games. The differences inform the distinct
 16 distribution markets for PC games, console games, and mobile apps. PC games moved to digital
 17 distribution earlier than console games, which still have a significant physical distribution
 18 component.³¹ Mobile games are solely digitally distributed and are available on mobile app stores
 19 accessible from and optimized for a mobile device.

22 ²⁹ Xbox One has the fewest at about 2,700, while Switch has the most at almost 3,300.

23 ³⁰ Tom Wijman, *The World's 2.7 Billion Gamers Will Spend \$159.3 Billion on Games in*
 24 *2020; The Market Will Surpass \$200 Billion by 2023*, Newzoo (May 8, 2020),
 25 <https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-2020-2023/>. There are approximately 1.3 billion PC gamers, or half the number of mobile gamers, according to the study.

26 ³¹ Riordan Zentler, *Digital vs. physical: How the video game industry learned from*
 27 *Microsoft's missteps*, The Spokesman-Review (Apr. 30, 2020), <https://www.spokesman.com/stories/2020/apr/30/digital-vs-physical-how-the-video-game-industry-le/>.

92. Mobile app stores do not sell PC games, and PC game stores do not sell mobile apps, though occasionally different versions of the same title might be available as a PC game and a mobile app. Similarly, consoles have their own digital storefronts specific to the brand (*e.g.*, PlayStation or Xbox) that do not sell PC games, and vice versa. Because the applications are downloaded on the device after purchase, they must be accessed by the compatible device—PC, console, or mobile device. A Publisher cannot sell its PC game on the PlayStation Store or the Apple App Store, for example, in response to Valve’s supracompetitive revenue sharing requirement.

93. Valve itself recognizes that PC games do not compete with mobile games.³² For example, Valve has stated, “Valve does not make or sell phones, tablets, or video games for mobile devices, or otherwise compete in the mobile market. Valve also operates Steam, an online platform that lets users purchase and play PC games on their laptops and desktops. Steam users cannot buy or use mobile apps on Steam.”³³ Valve adds that it “does not compete in the mobile market or sell ‘apps.’”³⁴

94. Additionally, the size of game files helps explain why games on different platforms (PC, console, and mobile) are complements rather than substitutes, and why their distribution channels also are not reasonably interchangeable. Factors that affect playability and the user experience include rich graphics and textures, audio, and maps; these add significant data volume. The average size of an iOS mobile game in 2020 was 465 MB, while in 2016 it was only 264

³² See, *e.g.*, February 18, 2021 Joint Letter Brief Regarding Apple’s Subpoena to Non-Party Valve Corporation, *Epic Games, Inc. v. Apple, Inc.*, No. 4:20-cv-05640-YGR (N.D. Cal.), ECF No. 346.

³³ *Id.* at 5.

³⁴ *Id.* at 7.

1 MB.³⁵ Even the most basic PC game is generally larger than that, with richer graphics and higher
2 resolution textures.³⁶

3 95. And, on the supply side, PC game developers also view PC games as distinct from
4 console and mobile games. While some game developers release the same title for both PC and
5 console, they must design and code a different version of the game to be played on a console. The
6 PC version of the title is not compatible with a game console, and vice versa. The same is true for
7 a PC game and a mobile version of the same title.

8 96. Game executables created for a PC cannot be used on a console or a mobile device.
9 Publishers must expend significant time and resources to redesign and recode the game to be
10 compatible with the different platform, a process called “porting.” Mobile games for iOS require
11 a different programming language from games built for Android. And these differ from the
12 languages most commonly used for PC games and console games.

13 97. Further, the developer must account for the differences between PC game
14 distribution, console game distribution, and mobile game distribution. The developer will have to
15 incorporate the SDKs for the appropriate hardware device or site, such as Xbox or Steam.

16 98. The SDKs for Xbox, PlayStation, and Nintendo Switch are not publicly available
17 to developers—developers must be approved by Microsoft, Sony, and Nintendo, respectively,
18 prior to developing a version of their game for those consoles. This makes it more difficult for
19 Publishers to switch to a console game as a substitute for a PC game due to PC game distribution
20 restrictions or prices. Development on some consoles also requires specialized developer
21 hardware units that can cost several thousand dollars and be difficult to obtain, increasing the
22 barriers to entry into the console market.

23
24
25 ³⁵ Craig Chapple, *The Average Size of the U.S. App Store’s Top Games Has Grown 76% in*
26 *Five Years*, Sensor Tower (Mar. 9, 2021), <https://sensortower.com/blog/ios-game-size-growth-2020>.

27 ³⁶ Jarred Walton, *Why are game install sizes getting so big?*, PC Gamer (Oct. 31, 2019),
28 <https://www.pcgamer.com/why-are-game-install-sizes-getting-so-big/>.

1 99. Further preventing substitutability, these hardware systems look to Steam sales and
 2 reviews as an indicator of market viability when evaluating PC games to port over to their systems.
 3 Consoles therefore cannot be used by a Publisher to substitute away from distribution through
 4 Steam.

5 100. Accordingly, PC Publishers cannot simply substitute to development of mobile or
 6 console games in response to Valve's supracompetitive revenue share percentage on PC games.
 7 They likewise cannot substitute to distribution channels for console or mobile games to sell their
 8 PC games.

9 101. PC games have different monetization strategies than console games and mobile
 10 games, which affect their design and distribution strategies. PC game Publishers are not competing
 11 with console developers or mobile developers for distribution access or customers.

12 102. Industry participants and analysts also recognize PC games, console games, and
 13 mobile games as separate categories and track and report metrics for each category.

14 103. In sum, the PC game distribution market is different from, and does not include,
 15 console and mobile game distribution.

16 **B. The Relevant Geographic Market Is Worldwide**

17 104. The relevant geographic market for PC game distribution is worldwide. Valve
 18 distributes games for sale over the internet, and Steam is available anywhere in the world to a user
 19 with an internet connection.

20 105. According to Valve, Steam store sales revenues are approximately evenly divided
 21 between North America (34%), Western Europe (29%), and the rest of the world (37%) as
 22 consumers can purchase games on Steam worldwide.

23 106. Valve promotes Steam as a way for Publishers to "reach a global audience": "With
 24 over 120 million monthly active users across 249 countries, Steam gives you access to a worldwide
 25 community of players."³⁷

26 ³⁷ Valve Corporation, *Steamworks*, <https://partner.steamgames.com/#cat-globalaudience>
 27 (last accessed Dec. 17, 2021).

1 107. Valve further promotes: “Steam is a global platform with official support for 26
2 languages across many platform features. Supporting as many languages, currencies and payment
3 methods as possible enables Steam to provide the best experience possible to customers around
4 the world.”³⁸

5 108. The SDA provides that “[a]ny Territory restrictions, if any, shall apply to the sale
6 or initial distribution of the Application” but requires the Publisher to “acknowledge[] and agree[]
7 that, since Steam Account Owners can access their accounts from anywhere, Steam Account
8 Owners may receive subsequent distributions of Applications from places outside the Territory.”³⁹
9 The lack of any real geographic limitation is further exhibited by the definition of “Territory” as
10 “worldwide,” unless the Publisher “has restricted an Application’s distribution territory through
11 the online tools provided by Valve for this purpose.”⁴⁰

12 109. Steam hosts games from developers all over the world, and the Steam Workshop, a
13 community content marketplace, includes contributors from 75 countries.

14 110. The majority of PC game distribution through other channels besides Steam is
15 likewise digital and lacks any geographic constraints. For example, Epic claims its Creators
16 represent 235 countries and territories.⁴¹ EA’s Origin includes 33 country-specific stores, with
17 users in any other country defaulting to the closest store.

18 111. The market for PC game distribution is worldwide in scope because (i) PC gamers
19 are limited in their demand for products only by the language spoken; (ii) there is little physical
20 distribution of PC games on disks; and (iii) developers anywhere in the world seek to access as
21 broad a market as possible, among other reasons.,
22
23

24 ³⁸ Valve Corporation, *Localization and Languages*, <https://partner.steamgames.com/doc/store/localization> (last accessed Dec. 17, 2021).

25 ³⁹ SDA § 3.6.

26 ⁴⁰ *Id.* § 1.25.

27 ⁴¹ *Epic Games Store 2020 Year in Review*, *supra* note 17.
28

VII. VALVE'S MONOPOLIZATION SCHEME

112. Valve engages in a scheme to maintain its dominance in the PC game distribution market through multiple tactics, each of which is intertwined with and amplified by the others, including: (a) contract provisions and rules imposed on Publishers; (b) the Steam key authorization system; and (c) Steam store reviews, the game recommendation algorithm, and other enforcement mechanisms.

113. As a direct consequence of Valve's anticompetitive conduct, Dark Catt and Publishers: (a) paid Valve a supracompetitive revenue share; (b) could not take advantage of better revenue share agreements offered, or that would be offered, on other stores; and (c) could not engage in exclusives on other stores, thereby depriving Dark Catt and Publishers of additional game sales and better marketing support. Thus, Dark Catt and Publishers suffered antitrust injury.

A. Valve Requires Publishers to Agree to an Anticompetitive MFN

114. Valve requires that Publishers offer the best price for their games and DLC on Steam, imposing an MFN on the price Publishers can set for their products on different stores. That is, Publishers may not offer their game or DLC at lower prices on other storefronts regardless of the actual costs of distribution on the other store. The MFN requires price parity.

115. The MFN also serves to guarantee Valve the earliest access to any game or add-on content, removing an important promotional tool that Publishers could use to attract customers to other stores that offer the Publishers more favorable distribution terms.

116. Most favored nation provisions can be procompetitive. The "price parity and marketing restrictions MFN" imposed by Valve is not. Restricting Publishers from offering lower prices on other stores and restricting marketing activities impedes competition in the PC gaming industry and elevates rather than reduces pricing.

1. Valve's MFN Creates a Price Floor

117. MFNs can be procompetitive when they control costs and therefore keep down prices to end customers. For example, a large buyer may have an MFN with a supplier guaranteeing it the same pricing as the supplier provides to any other buyer. This may allow the

1 buyer to control its costs for that input and ensure it is receiving the supplier's most competitive
2 pricing. This may ultimately allow the buyer to maintain lower prices for its products using the
3 input.

4 118. Valve is not purchasing a product from the Publisher; the MFN is not helping Valve
5 control costs and receive competitive prices for its inputs vis a vis its competitors. Rather, Valve's
6 MFN is controlling the terms of the transaction between the Publisher and customer, including for
7 transactions that take place off of the Steam site. The MFN sets a price floor throughout the
8 market, and sets it at an elevated level because the Publisher must account for Valve's 30%
9 commission in choosing its retail price. The Publisher must then use this same retail price at other
10 stores regardless of the more favorable revenue sharing terms or other advantageous distribution
11 terms it may receive from those stores.

12 119. Rather than ensuring its customers the lowest prices, Valve's MFN results in higher
13 prices paid by its PC gaming customers and/or reductions in output and/or quality of games.
14 Publishers cannot use lower pricing or other marketing tactics to compete to attract customers to
15 other distribution channels where Publishers get to keep more of the purchase price of their games.
16 Publishers remain reliant on Steam to publish their games and cannot put downward pressure on
17 Valve's commission rate by working with Steam's competitors. In other words, the principal
18 beneficiary of Valve's MFN is Valve itself, not Publishers or game buyers or the competitive
19 process.

20 120. These types of MFNs have been shown to increase prices. For example, Amazon
21 charges a commission to third-party sellers on its store (generally between 8% and 17% depending
22 on product category).⁴² One of its biggest competitors, eBay, also charges a commission on sales
23 on its digital store, but the commission rates are lower than Amazon's rates across many product
24 categories. Amazon previously imposed an MFN preventing third-party sellers from selling their
25 products at a lower price through any other sales channel. When Amazon removed this MFN and
26

27 ⁴² Amazon, *Pricing*, <https://sell.amazon.com/pricing> (last accessed Dec. 17, 2021).

1 sellers no longer faced a price floor, products with a difference in commission rates between
 2 Amazon and eBay experienced price drops on both stores, with larger price drops for products
 3 with larger commission differentials.⁴³

4 121. Booking.com, a popular online travel agency, removed its MFN in many European
 5 countries following enforcement actions by competition authorities. Studies found that, after the
 6 MFN was removed, hotels offered lower prices through their own website than through online
 7 travel agency sites and increased the number of sales channels through which they distributed.⁴⁴

8 122. Valve's MFN is similarly keeping prices elevated because Publishers must account
 9 for Valve's supracompetitive 30% commission rate when setting them. Publishers cannot then
 10 discount the same product on another store to take advantage of more favorable commission rates,
 11 which would create competitive pressure for Valve to lower its supracompetitive commission.

12 2. Publishers Must Comply with Valve's MFN

13 123. Valve's MFN operates through two provisions in the SDA—the Delivery clause
 14 and the DLC clause, detailed below—and the Steam Key Rules that are binding on Publishers as
 15 a condition of using Steamworks and publishing their games on Steam. Valve's interpretation and
 16 enforcement of these terms confirm the existence and meaning of Valve's price parity and
 17 marketing restrictions MFN.

18 124. Under the Delivery clause, Developers are unable to offer a new game, update, or
 19 add-on through a third-party store before delivering that application to Steam. This prohibits
 20
 21

22 ⁴³ Yu Song, *Price Parity Clauses and Product Prices: Evidence from Amazon and eBay*
 23 (2021), available at [http://questromworld.bu.edu/platformstrategy/files/2021/07/Price-Parity-
 24 Clauses-and-Product-Prices.pdf](http://questromworld.bu.edu/platformstrategy/files/2021/07/Price-Parity-Clauses-and-Product-Prices.pdf).

25 ⁴⁴ Matthias Hunold, Reinhold Kesler, Ulrich Laitenberger & Frank Schlütter, *Evaluation of*
 26 *Best Price Clauses in Online Hotel Bookings*, 62 Int'l J. Indus. Org. 542 (2018); Sean Ennis,
 27 Marc Ivaldi & Vicente Lagos, *Price Parity Clauses for Hotel Room Booking: Empirical Evidence*
 28 *from Regulatory Change*, Ctr. for Econ. Pol'y Res. D.P. 14771 (2020); Andrea Mantovani,
 Claudio Piga & Carlo Reggiani, *Online Platform Price Parity Clauses: Evidence from the EU*
Booking.com case, 131 Eur. Econ. Rev. 103625 (2021).

1 Developers from entering exclusive offerings, including short-term exclusives or early releases,
2 with other storefronts for games, updates, or other add-on content.

3 125. An exclusive occurs when a Publisher offers a promotional deal on only one
4 storefront. The promotional deal can be in terms of a discount, special content, and/or an earlier
5 release date. The storefront of choice tends to market and promote the exclusive heavily, thereby
6 generating customer attention and potentially significant revenue for the Publisher (and the
7 storefront trying to build its market presence).

8 126. An exclusive is a common marketing tactic in many industries to attract customers,
9 because a competitor cannot offer the same product. This may bring customers to the store and
10 encourage additional purchases beyond the exclusive item. For example, while Apple's iPhone is
11 now widely available, it was originally available only on AT&T, encouraging new customers to
12 choose AT&T or Verizon customers to switch carriers.

13 127. The Delivery clause suppresses competition by ensuring Steam has access to the
14 newest inventory, on its terms, instead of having to negotiate for the newest releases in a
15 competitive market. Valve insists that it must receive a copy of game updates and localized
16 versions no later than when they are made available to any other third party for commercial release.
17 Without Valve's restrictions, exclusives would be more common in the market.

18 128. The Delivery clause reads as follows:

19 Delivery. Company shall submit the Applications to Steam for release no later than
20 the first commercial release of each Application or Localized Version, or, if already
21 commercially released as of the Effective Date, within thirty (30) days of the
22 Effective Date. Thereafter, Company shall submit to Steam any Localized Versions
23 and Application Updates (in beta and final form) when available, but in no event
later than they are provided to any other third party for commercial release.
Company shall provide these copies in object code form, in whatever format Valve
reasonably requests.

24 Additionally, for any copies of Applications that use Steamworks, Company shall
25 include the Steam client with those copies in accordance with instructions provided
26 by Valve. Company hereby acknowledges that a Steamworks version of the
27 Application requires a Steamworks Product Key [*i.e.*, Steam key] and that Valve
28 uses authentication software such that an end user must have a valid Steamworks

1 Product Key and authenticate such Steamworks Product Key via the Internet to use
2 the Steamworks version of the Application.⁴⁵

3 129. The SDA also suppresses competition through the DLC clause. DLC refers to
4 downloadable content, which is digital content a consumer can add onto a complete video game.
5 DLC may consist of cosmetic changes such as new character “skins” or costumes, or new stories,
6 modes, or missions that provide hours of additional playing time.

7 130. The SDA defines DLC as “any online content, features or software specific to an
8 Application that is made available by Company for purchase, download or online access separately
9 from the Application, whether through in-application purchase transactions or otherwise (for
10 example, but without limiting the foregoing, Application-themed virtual items, expansion packs,
11 additional filters, codecs, stock multimedia, game scenarios or levels, additional functionality,
12 etc.). DLC also includes any services provided with respect to an Application in exchange for a
13 subscription payment.”⁴⁶

14 131. The DLC clause reads as follows:

15 DLC. If Company distributes the Application through any other (non-Steam)
16 distribution channel, and if Company distributes any material DLC for the
17 Application through that other channel, it will deliver the DLC to Valve at the same
time such that Steam Account Owners will receive comparable DLC with
customers acquiring the Application through other channels.

18 Company is free to offer special and unique promotional content through other
19 distribution channels, provided that material parity is maintained between Steam
20 Account Owners and users of other distribution channels who make a comparable
investment in the Application and the associated DLC.⁴⁷

21 132. The DLC clause forbids Publishers from offering their DLC on another store at a
22 lower price than the one available on Steam and locks in the retail price throughout the market.
23 Further, Publishers cannot offer exclusive DLC or earlier release dates for DLC to attract
24 consumers to a different store that offers the Publisher a more favorable revenue share than Valve’s

25 ⁴⁵ SDA § 11.4.

26 ⁴⁶ *Id.* § 1.11.

27 ⁴⁷ *Id.* § 2.4.

30% commission. Valve’s requirement of “material parity” is enforced by Valve to mean the Publisher must provide the DLC at the same price on the other storefront as it is priced on Steam, despite Steam’s higher revenue share.

133. DLC can be a significant source of revenue to Developers. Accordingly, Valve’s restrictions on Publishers’ DLC have significant effects on Publishers’ ability to market and earn revenue from their DLC. In a 2019 survey, 87% of gamers reported that they purchased DLC. As examples, each player of the decade-old game League of Legends spent an average of \$92 on DLC for the game in 2019, and Valve’s game Counter-Strike saw an average \$70 spend per player.⁴⁸

134. Indie developers also benefit from DLC, particularly to drive sales later in the lifecycle of a release. As examples:

- EXOR Studios reported sales of its game X-Morph: Defense were about 80,500 copies of the base game and 73,300 total units of its three DLC offerings. Its bundled “complete version,” including the game and DLC, accounted for almost half its sales.
- The studio Fellow Traveler reported that one-third of its revenues for its game Hacknet have been from DLC.
- The studio No More Robots offers a \$20 game and a \$10 story DLC, with between one-fourth and one-third of customers (depending on a non-sale or sale period, respectively) also purchasing the DLC.⁴⁹

135. The Steamworks Documentation on Steam Keys requires Developers to offer games on Steam at the best available price, imposing a corresponding MFN on the base game as the DLC clause imposes on DLC. Valve’s own published interpretation and its guidelines for Publishers make the existence of the price parity and marketing restrictions MFN clear to Publishers. The Steam Keys Rules and Guidelines section states, for example:

⁴⁸ Statista, *Share of gamers who purchase downloadable content in the United States in 2019* (Mar. 3, 2021), <https://www.statista.com/statistics/274130/purchased-virtual-gaming-items-and-content-in-the-us/>; Statista, *Average annual spend on downloadable content (DLC) in selected video games in the United States in 2019* (Mar. 3, 2021), <https://www.statista.com/statistics/1104745/video-gaming-dlc-spend-game/>.

⁴⁹ Simon Carless, *The surprising way that paid DLC works*, Gamasutra (July 13, 2020), https://www.gamasutra.com/blogs/SimonCarless/20200713/366297/The_surprising_way_that_paid_DLC_works.php.

- 1 • “We ask you to treat Steam customers no worse than customers buying Steam keys
- 2 outside of Steam.”
- 3 • “You should use keys to sell your game on other stores in a similar way to how you
- 4 sell your game on Steam. It is important that you don’t give Steam customers a
- 5 worse deal.”
- 6 • “It’s OK to run a discount on different stores at different times as long as you plan to
- 7 give a comparable offer to Steam customers within a reasonable amount of time.”
- 8 • “Keep in mind that the perceived price in the bundle/subscription should be a price
- 9 you are willing to run the game at a standalone price or discount on Steam. . . . **We**
- 10 **want to avoid a situation where customers get a worse offer on the Steam store,**
- 11 **so feel free to reach out to us via the Developer Support tool if you want to talk**
- 12 **through a specific scenario.”** (emphasis in original)
- 13 • “We reserve the right to deny requests for keys or revoke key requesting privileges
- 14 for partners that are abusing them or disadvantaging Steam customers.”
- 15 • “If we detect that you have requested an extreme number of keys and you aren’t
- 16 offering Steam customers a good value, we may deny your request.”
- 17 • “We reserve the right to remove key requesting privileges from any partner whose
- 18 sole business is selling Steam keys and not providing value or a fair deal to Steam
- 19 customers.”

20 (collectively, “Steam Key Rules”).⁵⁰

21 136. Although Valve specifically avoids using the word “price” in most of the above

22 statements, it is well understood by industry participants that “deal,” “offer,” and “value” mean

23 price, consistent with those terms’ common usage. This understanding comes in part from Valve’s

24 enforcement of the terms as requiring price parity across stores and forbidding Publishers from

25 offering a lower price on another store than the price at which the game is available on Steam.

26 137. The SDA also governs the use of Steam keys with the following Steamworks

27 Product Keys provision:

28 Prior to manufacturing or reproducing (or having manufactured or reproduced) any copies

of Applications that use Steamworks for distribution outside of Steam, including any pre-

release copies made available as part of a beta program, Company shall request

Steamworks Product Keys from Valve for distribution with such copies and Company shall

⁵⁰ Valve Corporation, *Steam Keys*, <https://partner.steamgames.com/doc/features/keys> (last accessed Dec. 17, 2021).

1 include such Steamworks Product Key(s) with each copy of the Applications in accordance
2 with instructions provided by Valve.⁵¹

3 138. When the price and availability of games and DLC are uniform throughout the
4 market (because of Valve's contractual restrictions), Publishers cannot incentivize consumers to
5 purchase games or DLC through a non-Steam method that would provide a more favorable revenue
6 opportunity to the Publisher. Steam is able to preserve its market power, and rivals cannot gain a
7 foothold in the market by attracting Publishers with more favorable distribution terms or customers
8 with lower prices and exclusive offerings. This is a crucial problem with Valve's pricing parity
9 and market restrictions MFN.

10 139. While Valve has some business interest in ensuring it receives updates to games
11 hosted on Steam, the MFN far exceeds any legitimate interest because it requires equal pricing and
12 availability throughout the market. This does not benefit Steam customers, who are deprived of
13 fair competition, but rather benefits Valve: Publishers remain loyal to Steam and competitors
14 cannot take share from Steam.

15 140. As discussed further below, the effects on competition include lower revenues for
16 Publishers, reduced flexibility in pricing and promoting games, higher prices and/or lower quality
17 or quantity of games for consumers, and barriers to entry and expansion for Valve's would-be
18 competitors.

19 **B. Valve Enforces the MFN to Prevent Meaningful Competition in PC Game**
20 **Distribution**

21 141. Though the terms of the SDA and Steam Key Rules purport not to explicitly require
22 pricing and availability parity by using language such as "material parity," "worse offer," and "fair
23 deal," Valve's published interpretations and enforcement of the provisions makes clear the
24 meaning and its intent. The terms are understood by Valve and Publishers to require pricing parity
25 across stores and prevent exclusive offerings.

26
27 ⁵¹ SDA § 11.4.

1 142. While the Steam Key Rules are included in the Steamworks Documentation rather
 2 than the SDA, Valve enforces terms in the Steamworks Documentation as binding on Publishers.
 3 For example, in November 2019, Valve banned approximately 1,000 games from Steam in a single
 4 day for allegedly abusing “some Steamworks tools.” These games included legitimate games that
 5 had thousands of purchases and reviews.⁵²

6 143. The MFN applies to other stores selling games available on Steam, even if the
 7 alternative store does not sell Steam keys. There are ample examples of Valve explaining and
 8 enforcing the price parity and marketing restrictions MFN.

9 144. For example, Epic has its own content delivery network and digital rights
 10 management, and it does not sell Steam keys. Games are hosted and played through its own
 11 system. Epic Games Store offers Publishers a higher revenue sharing percentage, allowing them
 12 to keep 88% of the sales revenues.

13 145. Epic CEO Tim Sweeney explained how Valve’s MFN still affects prices on his
 14 company’s store, even though Epic does not sell Steam keys:

15 Steam has veto power over prices, so if a multi-store developer wishes to sell their
 16 game for a lower price on the Epic Games store than Steam, then:

17 1) Valve can simply say ‘no’

18 2) Pricing disparity would likely anger Steam users, leading to review bombing,
 etc.⁵³

19 146. Industry press has also noted that, despite the expected lower prices on Epic Games
 20 Store given the larger percentage of revenue that Publishers keep, customers “have seen the same
 21 price tags for games on Epic’s storefront as on Steam (when titles are available on both).”⁵⁴
 22

23 ⁵² Alex McHugh, *1000 games removed from Steam due to Steamworks ‘abuse’*, Green Man
 24 Gaming (Nov. 26, 2019), [https://www.greenmangaming.com/newsroom/2019/11/26/1000-games-](https://www.greenmangaming.com/newsroom/2019/11/26/1000-games-removed-from-steam-due-to-steamworks-abuse)
 25 [removed-from-steam-due-to-steamworks-abuse](https://www.greenmangaming.com/newsroom/2019/11/26/1000-games-removed-from-steam-due-to-steamworks-abuse).

26 ⁵³ Tim Sweeney, *@TimSweeneyEpic tweet* (Jan. 30, 2019), [https://twitter.com/](https://twitter.com/TimSweeneyEpic/status/1090663312814157824)
 27 [TimSweeneyEpic/status/1090663312814157824](https://twitter.com/TimSweeneyEpic/status/1090663312814157824).

28 ⁵⁴ Kyle Orland, *Epic CEO: “You’re Going to See Lower Prices” on Epic Games Store*, Ars

1 147. Another publisher reported on a similar experience, sharing its communications
2 with Valve about whether it could offer its game “at a lower price to take advantage of the lower
3 commission rates” offered on other stores. Valve “replied that they would remove [the game] from
4 Steam if I allowed it to be sold at a lower price anywhere, even from my own website without
5 Steam keys and without Steam’s DRM.”⁵⁵

6 148. Other publishers have received similar explanations from Valve. One publisher
7 contacted Steam through the Developer Support tool, as instructed in the Steam Keys Rules for
8 questions about how “to avoid a situation where customers get a worse offer on the Steam store”
9 and remain compliant with the Steam Keys Rules. The developer asked, “Regarding the pricing
10 policy, can a non-Steam variant of a game be sold at a different price than on the Steam store
11 page?” Steam’s response was “Selling the game off Steam at a lower price wouldn’t be considered
12 giving Steam users a fair deal.”⁵⁶

13 149. Dark Catt also learned the real meaning of the Steam Keys Rules when it offered
14 its game for a temporary lower price on Humble Bundle and shortly thereafter was banned from
15 Steam.

16 150. The SDA ostensibly gives Publishers 30 days to cure any breach of the agreement,
17 including fixing any pricing discrepancies. But Valve disregards this clause at will and removes
18 games from the Steam store without giving Publishers the specified time to cure the alleged breach.
19
20

21 Technica (Mar. 20, 2019), [https://arstechnica.com/gaming/2019/03/epic-ceo-youre-going-to-see-](https://arstechnica.com/gaming/2019/03/epic-ceo-youre-going-to-see-lower-prices-on-epic-games-store/)
22 [lower-prices-on-epic-games-store/](https://arstechnica.com/gaming/2019/03/epic-ceo-youre-going-to-see-lower-prices-on-epic-games-store/) (“The Epic Games Store’s much-ballyhooed 88-percent
23 revenue share has been great news for developers who are no longer forced to accept Steam’s de
24 facto 70-percent standard. But this new behind-the-scenes monetary split hasn’t resulted in
savings for gamers, who thus far have seen the same price tags for games on Epic’s storefront as
on Steam (when titles are available on both).”).

25 ⁵⁵ Wolfire Games, *Regarding the Valve Class Action* (May 6, 2021),
<http://blog.wolfire.com/2021/05/Regarding-the-Valve-class-action>.

26 ⁵⁶ Reddit, *Does Steam have a No Favored Nation Clause* (May 2, 2021),
27 [https://www.reddit.com/r/gamedev/comments/n3k5kw/does_steam_have_a_no_favored_](https://www.reddit.com/r/gamedev/comments/n3k5kw/does_steam_have_a_no_favored_nation_clause/)
28 [nation_clause/](https://www.reddit.com/r/gamedev/comments/n3k5kw/does_steam_have_a_no_favored_nation_clause/).

1 Valve may also refuse to provide an explanation for the alleged breach or the information the
2 Publisher needs to cure it.

3 151. Valve removes games or Publishers as a show of strength to keep Publishers
4 compliant with its overly restrictive pricing and marketing policies and to maintain its monopoly,
5 despite the cost. Valve trades revenues it would receive from sales of the games it removes from
6 Steam for acquisition and maintenance of its monopoly. Valve's conduct makes economic sense
7 only through the exclusion of competition.

8 152. As discussed further below, the anticompetitive effects of Valve's price parity and
9 marketing restrictions MFN outweigh any supposed procompetitive benefit (and there are
10 substantially less restrictive ways to achieve any such benefit). Valve's MFN keeps revenue
11 sharing percentages (and potentially game prices) artificially high and discourages new market
12 entry.

13 **C. Steam Keys Benefit Valve by Providing Monitoring of Publishers' Sales on**
14 **Other Stores and Enforcement of the MFN**

15 153. Valve, with the sole ability to generate Steam keys, has made itself the de facto
16 gatekeeper to the PC gaming ecosystem. Steam keys permeate the gaming ecosystem and keep
17 Publishers dependent on Valve for access, which also keeps them from challenging Valve's
18 anticompetitive conduct.

19 154. Despite seeming to provide a free service to Publishers to offer their games on third-
20 party stores, the ubiquity of Steam keys comes at a significant cost to Publishers and the market
21 as a whole. Valve made a business decision to offer Steam keys to Publishers at no out-of-pocket
22 cost because they allow Valve to control pricing and quantity throughout the industry and generate
23 revenues for itself in other ways.

24 155. While a given Publisher can opt out of taking Steam keys from Steam, it cannot opt
25 out of the distorted distribution market those keys have created. Availing itself of Steam keys is
26 thus a practical necessity for Publishers, one that compels Publishers to adhere to Steam's
27 distribution terms.

1 156. Providing Steam keys for no upfront monetary fee helps Valve to maintain Steam
2 as the dominant digital platform for purchasing and playing video games. Publishers and gamers
3 are locked in to using Steam keys to buy, sell, promote, and play PC games. Publishers must make
4 their games available on Steam and must have some amount of sales success to get approval for
5 Steam keys to sell on other stores. Gamers that purchase a Steam key through another store are
6 taken right back to Steam to redeem the key through their Steam account and play the game on
7 Steam.

8 157. Steam keys therefore keep Publishers and customers in the Steam ecosystem even
9 when they transact via a Steam key on a third-party store. Gamers have much less incentive to go
10 to a third-party store if the price is the same as on Steam, the games are the same as on Steam, and
11 they purchase a Steam key that leads them right back to Steam anyway.

12 158. The Steam key purchasers are still Steam users, and Steam is still able to track
13 gameplay. This information has value to Steam, including to provide personalized
14 recommendations to users for additional games to purchase via Steam, monitor trends in gameplay,
15 and understand purchase patterns and game popularity.

16 159. Through Steam keys, Valve is also able to monitor Publishers' sales on other stores
17 and compliance with its price parity and marketing restrictions MFN.

18 160. Valve benefits when a Steam key is purchased on another site, despite not earning
19 a commission on the initial sales transaction. Because the game is still distributed by and played
20 on Steam, Valve receives a 30% commission for the customer's subsequent purchases made in the
21 game, and receives a commission for purchases made on the Steam Workshop or Marketplace.
22 Under the SDA, Publishers agree that "Applications distributed via Steam will not include
23 functionality from or links or references to any store other than Steam, or any other facility for
24 making purchases or payments."⁵⁷

25
26
27 ⁵⁷ SDA § 2.5.

1 161. Similarly, the Steamworks Documentation states that, “For any in-game purchases,
2 you’ll need to use the microtransaction API so Steam customers can only make purchases from
3 the Steam Wallet.”⁵⁸ In October 2021, Valve also updated the Onboarding section of the
4 Steamworks Documentation to state that applications that “issue or allow the exchange of
5 cryptocurrencies of NFTs” are not allowed, and Valve removed such games from the store.⁵⁹ All
6 in-game purchases therefore go through Steam and provide revenue to Valve.

7 162. Steam keys also provide Valve a way to monitor sales on other platforms and limit
8 those sales. Valve uses Steam keys to control access to games available on Steam, including
9 Publishers’ attempts to sell their games on other storefronts. Steam keys also allow it to control
10 the quantity of Steam-compatible games sold on third-party stores and implement an output
11 restraint because Valve will only grant Steam keys in quantities less than a Publisher’s sales on
12 Steam.

13 163. Prior to August 2017, Valve allowed Publishers to generate keys for their games
14 without Valve’s oversight.⁶⁰ Valve now grants Publishers access to Steam keys at Valve’s
15 discretion and without defined guidelines. The Steam Key Rules provide that Valve can refuse or
16 revoke keys to Publishers “that are abusing them,” that requested “an extreme number of keys,”
17 or are “not providing value” to Steam customers. These Rules are intentionally vague to give
18 Valve broad discretion in administering them to suit its interests.

19 164. One rule Valve has implemented is that a Publisher will not be granted Steam keys
20 in a volume that exceeds the game’s actual sales on Steam. A Valve employee who works with

21 ⁵⁸ Valve Corporation, *Microtransactions (In-Game Purchases)*,
22 <https://partner.steamgames.com/doc/features/microtransactions> (last accessed Dec. 17, 2021).

23 ⁵⁹ Valve Corporation, *Onboarding*, [https://partner.steamgames.com/doc/gettingstarted/](https://partner.steamgames.com/doc/gettingstarted/onboarding)
24 *onboarding* (last accessed Dec. 17, 2021); Evgeny Obedkov, *Steam to remove all games with*
25 *NFTs, according to onboarding rules*, Game World Observer (Oct. 15, 2021),
[https://gameworldobserver.com/2021/10/15/steam-to-remove-all-games-with-nfts-according-](https://gameworldobserver.com/2021/10/15/steam-to-remove-all-games-with-nfts-according-to-onboarding-rules)
[to-onboarding-rules](https://gameworldobserver.com/2021/10/15/steam-to-remove-all-games-with-nfts-according-to-onboarding-rules).

26 ⁶⁰ Rishi Alwan, *Valve Doesn’t Want You to Buy Steam Games Outside of Steam*, Gadgets 360
27 (Aug. 18, 2017), [https://gadgets.ndtv.com/games/news/steam-key-developer-restrictions-bundle-](https://gadgets.ndtv.com/games/news/steam-key-developer-restrictions-bundle-valve-1739145)
[valve-1739145](https://gadgets.ndtv.com/games/news/steam-key-developer-restrictions-bundle-valve-1739145).

1 Steam developers posted on Steam’s developer-only board that the company would no longer
 2 automatically fulfill key requests but instead will deny requests for “normal size batches” if the
 3 game’s “Steam sales don’t reflect a need for as many keys as you’re distributing.” He further
 4 noted that these Publishers are “probably asking for more keys because you’re offering cheaper
 5 options off Steam,” which Valve does not allow.⁶¹

6 165. While Valve claimed this was because it was bearing the cost of allowing Steam
 7 keys to be sold on third-party stores, the costs associated with running a content delivery network
 8 in 2017—the year that Valve changed the policy—were reportedly approximately 0.2 cents
 9 (\$0.002) per gigabyte. This has dropped to a reported 0.07 cents (\$0.0007), or even 0.06 cents
 10 (\$0.0006) for large customers, in 2020.⁶² Valve gains far more value by keeping Publishers and
 11 consumers dependent on Steam, and from subsequent purchases through Steam, than any profit
 12 loss on a Steam key sale that might impose fractions of a penny in data costs to Valve for
 13 supporting the download of the purchased game.

14 166. This limit on Steam keys is an output control that ensures Steam will have the
 15 highest sales for any individual game, compared to all third-party stores selling Steam keys. Since
 16 most of the rest of the PC game distribution market is selling Steam keys, Valve ensures it has the
 17 highest sales for an individual game compared to its competitors.

18 167. This control, which has minimal or no procompetitive reason, cements Steam’s
 19 market dominance by allowing Valve to cap a Publisher’s sales of the Publisher’s own game on

20 ⁶¹ SteamSpy, @Steam_Spy tweet (Aug. 17, 2017) https://twitter.com/Steam_Spy/status/898208219675447296 (sharing post by Valve employee Sean Jenkin and noting “Valve will no
 21 longer automatically fulfill [sic] key requests from the developers to combat game sales outside
 22 of Steam.”); Sherif Saed, *In order to reduce game sales outside of Steam, Valve will no longer*
 23 *automatically fulfil key requests from devs*, VG247 (Aug. 18, 2017), [https://www.vg247.com/in-](https://www.vg247.com/in-order-to-reduce-game-sales-outside-of-steam-valve-will-no-longer-automatically-fulfil-key-requests-from-devs)
 24 [order-to-reduce-game-sales-outside-of-steam-valve-will-no-longer-automatically-fulfil-key-](https://www.vg247.com/in-order-to-reduce-game-sales-outside-of-steam-valve-will-no-longer-automatically-fulfil-key-requests-from-devs)
[requests-from-devs](https://www.vg247.com/in-order-to-reduce-game-sales-outside-of-steam-valve-will-no-longer-automatically-fulfil-key-requests-from-devs).

25 ⁶² SteamSpy, @Steam_Spy tweet (Aug. 17, 2017) https://twitter.com/Steam_Spy/status/898209620166094850 (linking to a 2017 article from Streaming Media Blog, now updated as
 26 Dan Rayburn, *CDN/Media Pricing See’s Big Drop for Largest Customers: Pricing Down to*
 27 *\$0.0006*, Streaming Media Blog (May 11, 2020), <https://www.streamingmediablog.com/2020/05/q1-cdn-pricing.html>).

1 other stores. By limiting the inventory of copies available on third-party stores, Valve ensures
2 Steam remains the dominant PC game distributor and ensures that Valve extracts its
3 supracompetitive revenue share from most sales of PC games.

4 168. The need for Steam keys to test, market, promote, and sell a game prevents
5 Publishers from violating the contractual requirements to provide games and any add-on content
6 at the same price and at the same time as they are available on Steam.

7 169. Valve also uses its sole ability to generate Steam keys, lack of clear guidelines to
8 govern their use, and arbitrary denial or delay in granting keys to keep Publishers dependent on it
9 and punish behavior seen as contrary to its position as gatekeeper to the PC gaming ecosystem.
10 This includes punishing those who speak out against its anticompetitive scheme.

11 170. For example, Valve views exclusive offerings and temporary sales on other stores
12 as a threat to its monopoly in PC game distribution. When Publishers enter into exclusives with
13 another store, or offer a discounted price, Valve may delay approval of or cut off Publishers' access
14 to Steam keys to cripple their sales and ability to run further promotions. It may also remove them
15 from the Steam store.

16 171. Without Steam keys, Publishers cannot offer their games for sale on most rival
17 stores. They also cannot provide access to larger publishers / investors and media who might help
18 them gain access to distribution channels not reliant on Steam and Steam keys.

19 172. Valve substantially delayed granting Dark Catt's request for Steam keys it planned
20 to sell on Humble Bundle at a discounted price. Valve then banned Dark Catt from Steam. Dark
21 Catt has had multiple requests for Steam keys from interested publishers wanting to trial its game
22 that it cannot fulfill because Valve, without reasonable explanation and opportunity to cure, cut
23 off its access and will not authorize Steam keys. Valve has thus been able to cut off Dark Catt's
24 access to the PC game distribution market more generally due to its market power.

25 173. Other Publishers have been victimized by Valve through its control of Steam keys
26 for taking action Valve perceived as against its interests. For example:
27
28

1 174. Studio Wildcard offered its game Ark: Survival Evolved, originally released in
 2 2017, as a free giveaway for one week in June 2020 on Epic Games Store and participated in
 3 Humble Bundle's end-of-summer sale in 2020. It was temporarily unable to fulfill the orders it
 4 received on Humble Bundle because Valve delayed approving additional Steam keys in retaliation
 5 for the promotions on other sites. That is, Valve delayed approving Steam keys because Studio
 6 Wildcard was temporarily offering a lower price on another store and increasing its non-Steam
 7 sales, even though the game had been available on Steam for years. Ark: Survival Evolved was
 8 removed from the Humble Bundle store because of the supply shortage.⁶³

9 175. In an unexplained purge in November 2019, Valve banned approximately 1,000
 10 games from Steam in a single day for allegedly abusing "some Steamworks tools." While some
 11 of these were "fake" games or linked to a fraudulent publisher, the purge also included legitimate
 12 games that had thousands of purchases and reviews. The game Electric Highways, which had been
 13 on Steam since 2015 and had over 1,300 positive reviews, was removed, showing the bans did not
 14 "just impact dodgy developers."⁶⁴ Some games were later restored to Steam, a rare admission of
 15 Valve's errors, because they had not broken any of the Steamworks rules.⁶⁵

16 176. Others were less fortunate: indie studio Idalgame was accused of using
 17 Steamworks tools to sell bundles to customers, but denied wrongdoing. Idalgame's games were

18
 19 ⁶³ Press Release, *Ark: Survival Evolved Available Now For Free on the Epic Game Store*,
 20 Studio Wildcard (June 11, 2020), <https://www.gamasutra.com/view/pressreleases/364606/>; Steam
 21 Community Discussions, *ARK: Survival Evolved, Steam keys for Humble Bundle ARK buyers*
 22 (Sept. 9, 2020), <https://steamcommunity.com/app/346110/discussions/0/2950376844043274493>;
 Humble Bundle, *Facebook post* (Sept. 22, 2020), [https://www.facebook.com/humblebundle/](https://www.facebook.com/humblebundle/posts/keys-for-ark-survival-evolved-have-been-restocked-please-head-to-your-download-p/3441295855913694/)
 posts/keys-for-ark-survival-evolved-have-been-restocked-please-head-to-your-download-
 p/3441295855913694/.

23 ⁶⁴ Nathan Grayson, *Valve Removes 1,000 Games From Steam As Punishment For Abusing*
 24 *Tools*, Kotaku (Nov. 26, 2019), [https://kotaku.com/valve-removes-1-000-games-from-steam-as-](https://kotaku.com/valve-removes-1-000-games-from-steam-as-punishment-for-1840054771)
 punishment-for-1840054771.

25 ⁶⁵ Alex McHugh, *1000 games removed from Steam due to Steamworks 'abuse'*, Green Man
 26 Gaming (Nov. 26, 2019), [https://www.greenmangaming.com/newsroom/2019/11/26/1000-games-](https://www.greenmangaming.com/newsroom/2019/11/26/1000-games-removed-from-steam-due-to-steamworks-abuse)
 27 removed-from-steam-due-to-steamworks-abuse; Reddit, *Steam is removing hundreds of games*
 28 *from the store atm* (Nov. 25, 2019), [https://www.reddit.com/r/Steam/comments/e1obe3/](https://www.reddit.com/r/Steam/comments/e1obe3/steam_is_removing_hundreds_of_games_from_the/)
 steam_is_removing_hundreds_of_games_from_the/.

1 nonetheless pulled and its access to the Steamworks backend was revoked, preventing it from
 2 accessing its own games, activity, and the Developer Support contact to try to resolve the error.⁶⁶
 3 That is, Idalgame's access to Steam, Steam keys, and its Steam-hosted game was cut off because
 4 it was accused of offering lower pricing elsewhere.

5 177. Maintenance of Steam keys as the industry standard helps build and maintain
 6 Valve's monopoly in PC game distribution by allowing Valve to collect data on Publishers' sales
 7 on other stores and keeping Publishers compliant with Valve's restrictive policies to maintain
 8 access to Steam keys, determined at Valve's discretion. Valve's control over and use of Steam
 9 keys excludes competition.

10 **D. Valve Uses Its Review System to Enforce Its Contractual Restrictions and**
 11 **Discipline Publishers**

12 178. In addition to using Steam keys to control and punish Publishers, Valve encourages
 13 and/or allows its users to improperly attack Publishers using Steam reviews and community
 14 discussions, and does not timely remove inappropriate reviews, if at all.

15 179. For example, when Publishers offer exclusives on other stores, Valve may use
 16 social media channels to notify its followers of the Publishers' action, resulting in an attack on the
 17 Publisher on social media or by "review bombing" on the Steam store.

18 180. When the online community learns of an exclusive on another store, they will
 19 quickly begin leaving negative reviews for that game or other games from the same Publisher on
 20 Steam, and will do so in volume. The threat of being review-bombed, in violation of Steam's
 21 terms of use, keeps Publishers compliant with Valve's price parity and marketing restrictions MFN
 22 to Steam given the effect of reviews on a game's sales and visibility on Steam.

23 181. For example, 4A Games and Deep Silver faced review bombing for entering a
 24 temporary exclusive with Epic Games Store for the new release Metro Exodus. Metro Exodus had
 25 been available for pre-sale on Steam before announcing, on or about January 28, 2019, the one-

26 ⁶⁶ Grayson, *Valve Removes 1,000 Games From Steam As Punishment For Abusing Tools*,
 27 *supra* note 64.

1 year exclusive with Epic. The game was \$10 cheaper on Epic Games Store than on the Steam pre-
2 sale.

3 182. Valve issued a statement criticizing the exclusive, calling the decision “unfair to
4 Steam customers,” and posted the statement on Metro Exodus’s Steam store page. “This led to a
5 bunch of negative review spamming on the previous Metro games, Metro 2033 Redux and Metro
6 Last Light Redux” on Steam.⁶⁷ Spurred by Valve’s announcement that the decision was “unfair
7 to Steam customers,” the “hefty review-bombing” featured reviews mentioning Epic Games Store
8 rather than negative comments on the games themselves.⁶⁸ The games being review bombed were
9 not themselves Epic Games Store exclusives. Instead, review bombing was used to destroy the
10 marketability of the Publisher’s back catalogue in retaliation for its perceived disloyalty to Steam.

11 183. Metro Exodus would be available on Steam after the exclusivity period. Pre-sales
12 of the game would be honored through Steam, the content would be the same, and future updates
13 and free or premium DLC would be released simultaneously for both the Epic and Steam
14 versions.⁶⁹

15 184. Notably, Metro Exodus is a single-player game, rather than an online multiplayer
16 game. While a Steam user’s experience of a multiplayer game could potentially be impacted if
17 some players moved to the Epic Games Store rather than Steam (*i.e.*, because there are few players
18 to play against or with), there is no similar consequence to a single-player game’s user base being
19 spread out. There is only harm to Valve’s monopoly, so it encouraged its users to retaliate.
20

21 ⁶⁷ Jake Tucker, *People are review-bombing Metro Exodus, but this time: it’s positive*, Trusted
22 Reviews (Feb. 25, 2019), [https://www.trustedreviews.com/news/people-review-bombing-metro-
23 exodus-time-positive-3664757](https://www.trustedreviews.com/news/people-review-bombing-metro-exodus-time-positive-3664757).

24 ⁶⁸ Ali Jones, *Metro games are getting review-bombed on Steam*, PCGamesN (Jan. 30, 2019),
www.pcgamesn.com/metro-exodus/metro-2033-last-light-review-bomb.

25 ⁶⁹ Andy Chalk, *Players protest Epic’s Metro Exodus exclusive by review-bombing the series*
26 *on Steam*, PC Gamer (Jan. 30, 2019), <https://www.pcgamer.com/metro-review-bomb-steam/>;
27 Michael McWhertor, *Valve calls exclusive Metro Exodus deal with Epic ‘unfair’ to Steam*
28 *customers*, Polygon (Jan. 28, 2019), [https://www.polygon.com/2019/1/28/18201004/valve-metro-
exodus-epic-games-store](https://www.polygon.com/2019/1/28/18201004/valve-metro-exodus-epic-games-store).

185. Similarly, on or about April 3, 2019, game studio Gearbox announced its highly anticipated new game *Borderlands 3* would be an Epic Games Store exclusive, a decision made by publisher 2K/Take Two, not Gearbox. The launch date was September 13, 2019, and the game would be available on other digital storefronts in April 2020. Thousands of fans immediately went on Steam to review bomb the currently available Gearbox games, including *Borderlands 2*, in protest, specifically mentioning Epic Games. Again, this meant that users were giving negative ratings to Gearbox's back catalogue based on an entirely different game being an Epic Games Store temporary exclusive. Even though this had nothing to do with the prior games' merits or demerits, Valve refused to remove the false reviews.⁷⁰

186. The same happened to Ys Net after announcing that the third installment in its popular series, *Shenmue 3*, would be a timed exclusive on Epic Games Store and not available on Steam until after the year-long exclusivity period. Ys Net had raised funds to develop *Shenmue 3* on Kickstarter, showing the need for upfront funding such as that provided by Epic for the one-year exclusive. Angry Steam users review bombed predecessors *Shenmue 1* and *2* in retaliation for the Epic Games Store exclusive.⁷¹ *Shenmue 3* was one of the most-successful-ever crowdfunded games and part of a revered franchise, but still faced a catastrophe for its entire franchise as a result of selling through Steam's largest competitor; other Publishers cannot hope to stand up to Valve to seek more procompetitive terms for access to the PC game distribution market.

⁷⁰ Austin Wood, *Randy Pitchford on Steam review bombing: "makes me kind of happy" Borderlands 3 PC is an Epic exclusive*, GamesRadar (Apr. 9, 2019), <https://www.gamesradar.com/andy-pitchford-on-steam-review-bombing-makes-me-kind-of-happy-borderlands-3-pc-is-an-epic-exclusive/>.

⁷¹ Robert Purchase, *Clarification amid backlash: Shenmue 3 will come to Steam*, Eurogamer (June 11, 2019), <https://www.eurogamer.net/articles/2019-06-11-clarification-amid-backlash-shenmue-3-will-come-to-steam>; Nick Statt, *Epic Games will cover refunds of Shenmue III to protect developer after backlash*, The Verge (July 2, 2019), <https://www.theverge.com/2019/7/2/20680121/epic-game-store-shenmue-3-kickstarter-refunds-policy-controversy>.

1 187. Review bombing can cause a game's Steam score, or average user rating, to
2 plummet. For example, Metro 2033 dropped from an 89% positive review to 46%, and Metro Last
3 Light dropped from 90% to 43% during the review bombing related to the Metro Exodus
4 temporary exclusive.⁷² Reviews on Steam are important for future sales of a game and the
5 promotion the game receives on Steam. If subject to review bombing, the game likely will not be
6 featured on the Steam store homepage, which includes recommendations from friends, curators,
7 and the Steam community, plus trending and popular categories, or included in specific
8 recommendations and discovery queues to customers because those algorithms rely on aggregated
9 Steam scores. It may become less prominent in search results.

10 188. This results in fewer sales and lower revenue for the Publisher because the game
11 will not surface to new potential purchasers. Given that Steam offers over 50,000 games, a
12 mechanism for discovery can be critical to drive sales for a lesser known game.

13 189. Valve also uses the review system to encourage customers to purchase through
14 Steam only. Although a game may be purchased through numerous authorized outlets, only
15 reviews from users who purchased on Steam contribute to the Steam score that is used in the game
16 store algorithms. That is, reviews from users who care less about the store from which they
17 purchase and therefore are less likely to be outraged by an exclusivity deal, but who have
18 legitimately purchased a game through a Steam key and played the game on Steam using a valid
19 account, do not count for purposes of the Steam score algorithms.

20 190. Counting only reviews by customers who purchased on Steam also encourages
21 Publishers to promote direct sales on Steam rather than sales of Steam keys. The aggregated Steam
22 score takes into account not just the percentage of positive reviews, but also the total number of
23 reviews. A game cannot reach the highest tier if it has less than 500 reviews, even if all of them
24 are positive. Similarly, a game with a lower percentage of positive reviews but higher overall
25 quantity may be ranked in the same tier as a game with the reverse pattern—a higher percentage
26

27 ⁷² Jones, *Metro games are getting review-bombed on Steam*, *supra* note 68.

1 of positive reviews but fewer total reviews. Publishers therefore receive greater benefit from sales
2 and user engagement on Steam rather than independent brand-building activities or Steam key
3 sales; this dynamic is a direct result of Valve's conduct to build and reinforce its monopoly.

4 191. A game's Steam score can be crucial to its visibility on Steam and generation of
5 future sales. These sales then trigger additional reviews that will cause Steam's algorithm to give
6 the game better visibility, further improving its total sales. If a Publisher sells more Steam keys,
7 meaning the customer reviews do not count for the aggregate Steam score and game store
8 algorithms, the Publisher loses out on this virtuous cycle of more sales and better store placement.
9 Publishers have incentives created by Steam's review system and algorithm to have their
10 customers purchase through Steam, meaning the Publisher will pay Valve the supracompetitive
11 commission rate on those sales and Publishers and customers will remain locked into the Steam
12 ecosystem.

13 192. As a practical matter, gamers principally rely on Steam and Metacritic ratings when
14 evaluating games. Other PC gaming stores import Steam reviews rather than using their own
15 review system, further spreading the impact of review bombing on Steam and impairing
16 Publishers' ability to survive in the marketplace.

17 193. Valve has a policy of not deleting reviews, even when clearly irrelevant to the game
18 itself and abusive, and accordingly in violation of the terms of use of the system. In 2019, it
19 implemented a new process to use "tools and developer feedback to identify anomalous review
20 activity"; internally "dig into what happened"; and "discuss whether the review activity should be
21 marked 'off-topic.'" ⁷³ Valve has full discretion to even undertake a review and then make a
22 unilateral, uncontestable decision to mark review bombs as "off-topic."

23 194. Reviews marked "off-topic" will not count for the Steam score by default, but users
24 can change this setting to include "off-topic" reviews in the Steam scores they see and that generate
25 their recommendations. Regardless, the reviews remain on the game or Publisher page.

26 ⁷³ Valve Corporation, *Steam – 2019 Year in Review* (Feb. 5, 2020),
27 <https://steamcommunity.com/groups/steamworks/announcements/detail/1697229969000435735>.

1 195. Consequently, bad reviews, without any connection to the quality of a game but
2 instead employed as punishment for “disloyalty” to Steam, can bury a game on the Steam store
3 and permanently cripple a Publisher’s sales, even in the rare instances where Valve will review
4 and mark them as off-topic.

5 196. Though these reviews are not posted by Valve itself, it refuses to remove the
6 reviews although they violate its rules and guidelines, including rules requiring reviews to be
7 relevant and constructive and rules against harassment, abusive language, and swearing.⁷⁴

8 197. Publishers have gotten the message. For example, Unfold Games, Wlad Marhulets’
9 one-person development studio, was preparing to launch its first game, Darq. The game had been
10 listed on Steam for some time and generated a lot of interest. Mr. Marhulets refused an offer from
11 Epic Games Store to enter a one-year timed exclusive deal that included an upfront payment and
12 minimum revenue guarantee. This offer occurred around the time that another two-person studio
13 had announced its timed exclusive with Epic to great backlash, including death threats, and Mr.
14 Marhulets received many inquiries about whether he would enter a similar deal. He made a public
15 statement that he had refused the Epic exclusive, although recognizing that he probably would
16 have made more money on Epic. He explained that he had already announced the game would be
17 available on Steam on a specific date and did not want to upset customers.⁷⁵

18 198. Though the use of the review system as alleged in this Complaint may not appear
19 wrongful if viewed in isolation and without considering Valve’s market power, Valve’s use of its
20 review system reinforces and magnifies its monopoly by helping Valve control Publishers as part
21 of Valve’s overall monopolization scheme described above.

24 ⁷⁴ Valve Corporation, *Rules and Guidelines For Steam: Discussions, Reviews, and User*
25 *Generated Content*, https://support.steampowered.com/kb_article.php?ref=4045-USHJ-3810 (last
accessed Dec. 17, 2021).

26 ⁷⁵ Unfold Games, *Why I turned down exclusivity deal from the Epic Games Store* (Aug. 17,
27 2019), [https://medium.com/@unfoldgames/why-i-turned-down-exclusivity-deal-from-the-epic-](https://medium.com/@unfoldgames/why-i-turned-down-exclusivity-deal-from-the-epic-store-developer-of-darq-7ee834ed0ac7)
28 [store-developer-of-darq-7ee834ed0ac7](https://medium.com/@unfoldgames/why-i-turned-down-exclusivity-deal-from-the-epic-store-developer-of-darq-7ee834ed0ac7).

1 Steamworks features integrated, or amount of bandwidth consumed by the purchaser to download
 2 the game. The commission percentage is the same regardless of the underlying game price or
 3 demands on Steam's infrastructure, showing it is not linked to Steam's costs.

4 203. The commission percentage is similarly not linked to the value of Steam to the
 5 Publisher. Except for the relatively few highest revenue generating games, the commission
 6 percentage is 30% regardless of the number of Steamworks features the Publisher integrates or its
 7 use of other features that Steam promotes, such as community discussion boards or Steam
 8 Workshop. The actual dollar amount the Publisher pays to Valve is a function of the Publisher's
 9 price, returns, taxes, and other adjustments. The dollar amount the Publisher pays Valve may not
 10 be flat over time, despite the flat commission rate, if the Publisher decreases the price over the
 11 lifecycle of the game or participates in one of Steam's sales events, as examples.

12 204. Valve is able to charge this commission that far exceeds the costs of providing the
 13 service plus a competitive return because of its pricing and marketing restrictions and other
 14 conduct described herein. Competition forces prices towards a firm's marginal costs. Valve does
 15 not face such pressure. Through the wrongful actions alleged in this Complaint, it has cut off
 16 competitive pressures that would have forced it to lower the commission rate. It maintains this
 17 high commission rate through its durable monopoly power rather than superiority of its product.

18 205. For example, when Discord launched its store in 2018, it wrote, "Turns out, it does
 19 not cost 30% to distribute games in 2018. After doing some research, we discovered that we can
 20 build amazing developer tools, run them, and give developers the majority of the revenue share."
 21 It charged a 10% commission and indicated that it would explore lowering the rate in the future
 22 "by optimizing our tech and making things more efficient."⁷⁷

23 206. Given the threat posed by this emerging competitor's lower commission rate, Valve
 24 contacted Publishers who released their games on Discord to enforce the pricing restrictions.
 25 Valve made sure Publishers could not take advantage of Discord's lower revenue share by

26 ⁷⁷ Discord, *Why not 90/10?* (Dec. 14, 2018), <https://blog.discord.com/why-not-90-10-3761ebef4eab>.
 27
 28

lowering retail prices to attract purchasers away from Steam. Discord, which began as a communications site, also had the social networking tools to rival Steam, so Valve replicated social features from Discord. Valve prevented the Discord store from growing to a sufficient size to put downward pressure on its revenue share percentage, and ultimately the Discord store went out of business.

207. Epic explained in a court filing that it chose its 12% revenue share percentage for Epic Games Store (“EGS”) after studying its own costs and revenues and the shares of competing distributors of PC games. It concluded 12% was “sufficient to cover its costs of distribution and allow for further innovation and investment in EGS.”⁷⁸ EGS was “not yet profitable at its current scale and stage of development because it has front-loaded its marketing and user acquisition costs to gain market share.”⁷⁹ Steam is much further along in its development and should be experiencing greater economies of scale for its digital infrastructure as well as lower user acquisition costs given its dominance.

208. The New York Times reported in 2020 that according to Epic, “it takes 12 percent of sales [on Epic Games Store] — and still makes a profit of 5 percent to 7 percent.”⁸⁰

209. Epic CEO Tim Sweeney further explained EGS’s costs and how the costs allow it to charge a significantly lower revenue share than Steam while still making a profit. To run the digital store, “we pay around 2.5 per cent to 3.5 per cent for payment processing for major payment methods, less than 1.5 per cent for CDN costs (assuming all games are updated as often as Fortnite), and between 1 and 2 per cent for variable operating and customer support costs.” Moreover, “[f]ixed costs of developing and supporting the platform become negligible at a large

⁷⁸ Findings of Fact and Conclusions of Law Proposed by Epic Games, Inc., *Epic Games, Inc. v. Apple, Inc.*, 4:20-cv-05640-YGR (N.D. Cal. Apr. 7, 2021), ECF No. 407 ¶ 399 (citing deposition testimony of CEO Tim Sweeney, VP & GM of Store Steve Allison, and Head of Business Development for Store Joe Kreiner).

⁷⁹ *Id.* ¶ 405a.

⁸⁰ Jack Nicas, *How Apple’s 30% App Store Cut Became a Boon and a Headache*, N.Y. Times (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/technology/apple-app-store-epic-games-fortnite.html>.

1 scale. In our analysis, stores charging 30 per cent are marking up their costs by 300 to 400 per
 2 cent.” Mr. Sweeney concluded that, with “Epic receiving 12 per cent, this store will still be a
 3 profitable business for us.”⁸¹

4 210. Ubisoft, which runs its own store that is not reliant on Steam keys, has also stated
 5 that Valve’s 30% commission is too high. Chris Early, VP for partnerships and revenue, told the
 6 New York Times, “It’s unrealistic, the current business model they have. It doesn’t reflect where
 7 the world is today in terms of game distribution.”⁸² Ubisoft stopped releasing some of its games
 8 on Steam in favor of its own store Uplay and Epic Games Store, where the revenue split is 88/12
 9 instead of Steam’s 70/30. But, like EA, it has not been able to fully pull its games from Steam due
 10 to Steam’s control of the PC gaming ecosystem.

11 211. Valve has not invested in improving Steam as it would need to do if it had not
 12 foreclosed its would-be competitors. Valve does not need to introduce the innovative features or
 13 address the concerns of Publishers and customers, including rampant hate speech, harassment, and
 14 review bombing, that it would need to do to remain competitive in the market if it were not a
 15 monopolist.

16 212. Valve has also failed to address basic cybersecurity issues that leave its users and
 17 Publishers vulnerable to hacking, identity theft, fraud, and money-laundering schemes. It would
 18 have to address these issues if it did not use its price parity and marketing restrictions MFN and
 19 retaliatory conduct to foreclose competition.

20 213. With Valve’s pricing and marketing restrictions and control of Steam keys,
 21 Publishers simply have nowhere else to go to adequately participate in the market, despite Steam’s
 22 many shortcomings.

24 ⁸¹ *New Epic Games Store takes on Steam with just 12% revenue share – Tim Sweeney*
 25 *answers our questions*, MCV/Develop (Dec. 4, 2018), [https://www.mcvuk.com/development-](https://www.mcvuk.com/development-news/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-our-questions/)
 26 [news/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-](https://www.mcvuk.com/development-news/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-our-questions/)
[our-questions/](https://www.mcvuk.com/development-news/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-our-questions/).

27 ⁸² *Fortnite Maker Wants to Sell More Games, and Build a Platform to Do It*, N.Y. Times
 28 (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/business/steam-epic-games-store.html>.

1 **2. Competition in PC Gaming Distribution Would Force Down Valve's**
 2 **Commission Rate**

3 214. Without the price parity and marketing restrictions MFN and other conduct
 4 described herein, competition would force Valve to lower its commission rate to one supported by
 5 its costs plus a reasonable profit rather than supported by its anticompetitive conduct to exclude
 6 competition.

7 215. Because Publishers cannot offer their games for lower prices on other storefronts
 8 willing to charge lower revenue shares, the market lacks a mechanism to force Valve to whittle
 9 down the revenue sharing percentages it imposes on Publishers distributing their games on Steam.
 10 The MFN discourages “selective discounting” because if the Publisher offers a lower price
 11 elsewhere, it must extend that lower price to its sales on Steam due to Valve’s MFN price parity
 12 protection. This penalizes a Publisher for discounting since it will make less money on each Steam
 13 sale. A Publisher is required to reduce prices on Steam if it wants to reduce its prices to any portion
 14 of its customers.

15 216. Without Valve’s undue restraints, Publishers could and would contract with other
 16 storefronts to offer exclusives, which are valuable promotional tools for both stores and Publishers
 17 to attract customers and increase game sales. In response, Valve would have to compete with other
 18 stores in negotiations with Publishers—including, for example, in terms of price, revenue share,
 19 minimum sales guarantees, and marketing support—to get an exclusive offering on Steam, or
 20 simultaneous release rather than an exclusive on a competing marketplace.

21 217. In fact, Valve recently recognized this. It dropped its commission rate for the
 22 relatively few highest grossing games “just before the Epic Store went live,” and in direct response
 23 to “its strongest competitor in 10 years offer[ing] a better deal to developers.”⁸³ The change had
 24 no effect on virtually all Publishers as their individual games will not reach the revenue threshold
 25 for the reduced rate, particularly since the revenue threshold is after accounting for refunds,
 26

27 ⁸³ Conditt, *‘Half-Life: Alyx’ is proof Valve answers to no one*, *supra* note 5.

1 chargebacks, country-specific taxes/VAT, and other adjustments. Valve reacted to Epic's entry
 2 not by offering a more competitive rate to all Publishers, but by selectively targeting the tentpole
 3 games that, if lost, could cause Valve to lose its "stranglehold" on PC game distribution. In other
 4 words, even this modest, supposedly competitive, step was in fact an anticompetitive maneuver,
 5 and an indicator of Valve's continued ability to command a commission rate above the rate that
 6 would obtain in a competitive market for PC game distribution.

7 218. Using data from Steam, Video Game Insights estimates that 96% of games on
 8 Steam are indie games, meaning the Publisher has less than \$1 million in sales of each game on
 9 Steam and less than \$50 million in lifetime revenue on Steam.⁸⁴ These games will never reach the
 10 lowered commission threshold.

11 219. In announcing the unilateral change to the SDA that lowered the commission rate
 12 for the highest-selling games, Valve explained: "It's always been apparent that successful games
 13 and their large audiences have a material impact on those network effects so making sure Steam
 14 recognizes and continues to be an attractive platform for those games is an important goal for all
 15 participants in the network." It continued: "Our hope is this change will reward the positive
 16 network effects generated by developers of big games, further aligning their interests with Steam
 17 and the community."⁸⁵

18 220. Valve recognized, in other words, that the lower commission rate for the highest
 19 selling games was to keep these important game studios on Steam rather than pursuing more
 20 attractive financial arrangements with other stores. As importantly, the studios' large fan bases
 21
 22

23 ⁸⁴ *Indie games make up 40% of all units sold on Steam*, Video Game Insights (Sept. 1, 2021),
 24 <https://vginsights.com/insights/article/indie-games-make-up-40-of-all-units-sold-on-steam>; *see*
 25 *About Video Game Insights*, Video Game Insights, <https://vginsights.com/about> (last accessed
 Dec. 17, 2021) (defining AAA Publishers, AA Publishers, and Indie Publishers).

26 ⁸⁵ Valve Corporation, *New Revenue Share Tiers and other updates to the Steam Distribution*
 27 *Agreement* (Nov. 30, 2018), [https://steamcommunity.com/groups/steamworks/announcements/](https://steamcommunity.com/groups/steamworks/announcements/detail/1697191267930157838)
 detail/1697191267930157838.

1 will remain on Steam rather than purchasing the games through another store, such as its emerging
2 competitor Epic Games Store that offers more favorable terms to Publishers.

3 221. Valve wants to prevent other stores from generating “positive network effects” and
4 reaching a viable scale to compete with Steam through other stores offering Publishers more
5 favorable distribution terms, and by attracting consumers through exclusive offers, lower prices,
6 and/or better features.

7 222. Though Valve lowered its revenue share for games earning over \$10 million, its
8 share for all three tiers is above the revenue share that would be offered in a competitive market.
9 The lowered fees for the highest selling games are an admission that the 30% rate was
10 supracompetitive, and it remains supracompetitive for even the highest selling games.

11 223. The commission rate decreases are not a procompetitive volume discount as they
12 bear no relationship to the number of games sold, amount of bandwidth used, number of
13 Steamworks features incorporated, hours of gameplay, or any other metric that might relate to
14 Valve’s costs. In fact, they do not relate to the volume sold because the game’s specific retail price
15 set by its Publishers affects how many units have to be sold to reach the lower commission rate.
16 The commission rate decreases were a concession to the largest game Publishers to keep them
17 distributing their blockbuster games on Steam in the face of more favorable revenue sharing
18 percentages on other stores and the potential ability of these largest Publishers to self-distribute
19 their games.

20 224. Competition for exclusives would also result in procompetitive benefits for
21 Publishers and consumers, for example, upfront payments that Publishers invest in additional
22 development resources, increasing the quality, innovation, and number of games offered to
23 consumers. Instead, Steam requires delivery by right of contract and artificially keeps prices high.

24 225. By prohibiting exclusives on other storefronts, Valve has exercised undue control
25 in the marketplace and deprived Publishers of higher sales and more favorable revenue share
26 agreements that they otherwise could have received.

226. Absent the price parity and marketing restrictions MFN and Valve's other conduct, Publishers could and would contract with other stores to offer their games and DLC with exclusive offers and potentially at lower prices than the prices offered for the same games on Steam. This would attract additional customers to purchase games on the other stores, driving market share away from Steam and onto other PC game distribution stores. Further, this would allow Publishers to reach a broader consumer base and increase revenues through additional sales (and by keeping a greater percentage of each sale) even if they offer a lower retail price to game buyers.

227. With competition for distribution of PC games, Valve would be pushed to offer better commission rates to Publishers, allowing Publishers to keep more of the sales revenues from their products. In other words, the 30% revenue share Valve imposes on the majority of Publishers would be (and should have been) substantially reduced.

3. Valve Forecloses Other Stores that Offer More Competitive Commission Rates

228. Other storefronts already offer (or did offer before being forced out of business) more Publisher-friendly revenue share agreements. For example, Discord offered a 90/10 revenue split (Discord's store is now out of business), Indie Game Store offered a 80/20 split (with the option for a developer to reduce its share to 70% and give the remaining 10% to a charity of choice) (Indie Game Store is now out of business), Epic Games Store offers an 88/12 revenue split, and Humble Bundle offers a 75/25 split for games on the Humble Store and 95/5 revenue split for sales through the Humble Widget. Microsoft recently lowered its revenue share for PC games on the Microsoft Store to an 88/12 split, matching Epic Games Store. Itch.io, a popular store for indie games, allows developers to set their own revenue share percentage anywhere from 0% to 100%, with a default of 10%, meaning a 90/10 split for Publishers.

229. Given the price parity and marketing restrictions MFN and Valve's other conduct, Publishers cannot use the more advantageous revenue share agreements to offer a lower price on competing stores to try to boost sales.

230. Other digital distribution industries also have lower commissions. Google Play Store and Apple's App Store previously charged a 30% commission for distribution of mobile apps, and it is widely assumed they took their commission rates from Steam.⁸⁶ Both stores now charge a 15% commission for developers on the first \$1 million in revenues each year.⁸⁷ In announcing the drop from 30%, Apple explained the change "will benefit the vast majority of developers who sell digital goods and services on the store, providing them with a reduced commission on paid apps and in-app purchases." Google stated that the reduction in fees provides "funds that can help developers scale up at a critical phase of their growth by hiring more engineers, adding to their marketing staff, increasing server capacity, and more."⁸⁸

231. As former senior App Store executive Phillip Shoemaker explained, when Apple launched the App Store in 2008, it was a "revolutionary" method for app developers to sell to customers. Because the simplicity was not matched elsewhere, "people were willing to bite that 30 percent. But now, those kinds of tools are a dime a dozen." Mr. Shoemaker noted that "I think we're realizing that 30 percent is way too much," and Apple should charge closer to the roughly 3 percent charged by credit card companies to process transactions.⁸⁹ Apple has in fact cut its commission in half.

232. Microsoft also charges a 15% revenue share on all purchases of apps from its Microsoft Store. If the app developer uses its own or a third-party commerce platform in their

⁸⁶ J. Conditt, *Apple's App Store Antitrust Questions Will Be Uncomfortable for Valve*, Engadget (July 29, 2020), <https://www.engadget.com/apple-google-valve-steam-antitrust-hearings-app-store-221442066.html>.

⁸⁷ Google Help, *Changes to Google Play's Service Fee in 2021*, <https://support.google.com/googleplay/android-developer/answer/10632485> (last accessed Dec. 17, 2021); Press Release, *Apple Announced App Store Small Business Program*, Apple Inc. (Nov. 18, 2020), <https://www.apple.com/newsroom/2020/11/apple-announces-app-store-small-business-program/>.

⁸⁸ Sameer Samat, *Boosting developer success on Google Play*, Android Developers Blog (Mar. 16, 2021), <https://android-developers.googleblog.com/2021/03/boosting-dev-success.html>.

⁸⁹ Nicas, *How Apple's 30% App Store Cut Became a Boon and a Headache*, *supra* note 80.

1 app, Microsoft takes no fee and the developers keeps 100% of their revenue.⁹⁰ (As noted above,
2 the commission rate is 12% for PC games.)

3 233. Other online retailers selling third-party products to customers also charge
4 commission rates significantly less than Valve's 30%. Amazon charges between 8% and 17%
5 depending on product category; eBay charges 10% to 12% depending on product category; Etsy
6 charges 5% (plus a 3% + \$0.25 payment processing fee when using Etsy Payments); Walmart
7 charges 6% to 15% depending on product category for its third-party marketplace; and Poshmark
8 charges a 20% commission for sales over \$15.⁹¹

9 **B. Valve Excludes Potential Competitors from the Market**

10 234. The MFN imposed on Publishers erects a barrier to entry to the PC game
11 distribution market. PC game distributors may attempt to offer their services at lower prices (lower
12 revenue sharing percentages), which they can do profitably by working out more favorable terms
13 with Publishers or otherwise innovating to create efficiencies. The MFN prevents these stores
14 from benefiting from their efficiencies and using lower prices or exclusive offerings to gain a
15 foothold in the market because Publishers contractually cannot offer their games for lower prices
16 or at an earlier date on the competing stores. Publishers cannot forgo making their games available
17 on Steam and stores selling Steam keys to avoid the price parity and marketing restrictions MFN.
18 Valve's MFN thereby erects an artificial barrier to entry against potential competitors and stifles
19 competition from other storefronts that would benefit Publishers and potentially consumers.

20 235. Publishers have reduced incentive to lower retail prices to try to gain customers
21 because they have to correspondingly lower their price on Steam. The Publisher must be able to
22 make enough sales on the other storefront to offset the lost revenue from sales on Steam at the new
23 lower price. Because of Steam's dominant position as a PC game distributor and the

24 _____
25 ⁹⁰ Giorgio Sardo, *Building a new, open Microsoft Store on Windows 11*, Microsoft Windows
26 Blogs (June 24, 2021), <https://blogs.windows.com/windowsexperience/2021/06/24/building-a-new-open-microsoft-store-on-windows-11/>.

27 ⁹¹ Analysis Group, *Apple's App Store and Other Digital Marketplaces* app. A4 (July 22,
28 2020).

1 supracompetitive revenue share Valve extracts, this is highly unlikely to occur. Given the price
2 match, customers will continue to buy on Steam, and Publishers will make less money on each
3 sale. Publishers accordingly have less reason to lower prices even if they are able to keep more of
4 the sales revenues from another store.

5 236. Even if the other storefront offers Publishers a more favorable revenue share, they
6 cannot encourage consumers to switch stores through lower pricing. The other storefront's offer
7 becomes less meaningful in application and the Publishers remain reliant on Steam and Valve.

8 237. By removing price competition across the market and charging Publishers a
9 supracompetitive revenue share, Valve also suppresses quantity and quality of PC games by
10 limiting Publishers' distribution options and ways to earn a return on their investment. Other PC
11 gaming stores have had great difficulty in effectively gaining market share and contesting Valve's
12 monopoly because Valve's conduct as alleged in this Complaint prevents them from competing
13 on price.

14 238. While Epic is trying to succeed with its own distribution site, other developers and
15 publishers, even giant companies such as EA, Ubisoft, and Microsoft, are unable to take similar
16 actions to challenge Valve's monopoly given its pricing parity and marketing MFN, and other
17 conduct described herein. Other developers or publishers cannot sustain the losses that Epic has
18 in trying to compete with Valve; Epic reportedly lost \$181 million on the Epic Games Store in
19 2019 and \$273 million in 2020 (projected) by offering (i) Publishers upfront payments and revenue
20 guarantees in exchange for timed exclusives on Epic Games Store to attract customers; and (ii)
21 weekly free games to consumers.⁹²

22 239. Epic has stated that its 12% commission rate covers its costs for the Epic Games
23 Store, showing these losses are due to heavy promotional spending to break through Valve's
24 monopoly rather than an insufficient revenue share. As noted above, Valve's lowered revenue
25

26 ⁹² Tyler Wilde, *Epic will lose over \$300M on Epic Games Store exclusive, is fine with that*,
27 PC Gamer (Apr. 10, 2021), <https://www.pcgamer.com/epic-games-store-exclusives-apple-lawsuit/>.

1 share on the highest selling games, price parity and marketing restrictions MFN, and retaliatory
 2 conduct have impeded Epic's efforts to compete fairly in the market despite Epic's favorable terms
 3 for Publishers and consumers.

4 240. Epic launched its store by offering the already highly popular Fortnite game. In
 5 addition to its lower revenue sharing percentage of 12% for sales on its store, Epic waived the
 6 royalty for developers using its popular Unreal Engine game engine for their game (typically 5%
 7 of gross revenue after a revenue threshold is reached). It has also spent hundreds of millions of
 8 dollars attracting developers through minimum revenue guarantees, committing \$444 million to
 9 exclusivity deals in 2020.⁹³ Its sales of third-party games in 2020 were \$265 million, by
 10 comparison.⁹⁴

11 241. Epic spends heavily to attract customers as well. In 2020 alone, it gave away 103
 12 games worth a total of \$2,407, and customers claimed a total of 749 million copies of the 103 free
 13 games.⁹⁵

14 242. Epic Games Store also attempts to compete with Valve by soliciting timed
 15 exclusives from Publishers with benefits including minimum revenue guarantees and/or upfront
 16 payments. These deals may allow Publishers to sell the game at a lower price due to the lower
 17 revenue share and increase their sales, or improve the quality of the game using the guaranteed
 18 funding and greater financial security to increase their sales.

19 243. Epic uses exclusives as an attempt to compete against Valve's entrenched
 20 monopoly. It has said that it will stop signing exclusive agreements for new games and will
 21 consider making its own games available on Steam if Valve lowers the commission rate.⁹⁶ Other
 22

23 ⁹³ *Id.*

24 ⁹⁴ *Epic Games Store 2020 Year in Review*, supra note 17.

25 ⁹⁵ *Id.*

26 ⁹⁶ Tim Sweeney, *@TimSweeneyEpic tweet* (Apr. 24, 2019), <https://twitter.com/TimSweeneyEpic/status/1121218551342350336>; Jordan Ramee, *Epic Boss Says Exclusives Policy Will Change If Steam Adjust Their Revenue Share*, Gamespot (Apr. 29, 2019),
 27 <https://www.gamespot.com/articles/epic-boss-says-exclusives-policy-will-change-if-st/1100->
 28

1 potential Steam competitors do not have the financial resources and clout that Epic does and so
 2 are unable to make an offer of an exclusive that would be attractive to a Publisher. Accordingly,
 3 exclusives remain a rare promotional tool in the PC game distribution market, as opposed to, for
 4 example, console gaming. In contrast, Sony PlayStation console offers approximately 300 games
 5 that are only available on PlayStation as a marketing tool to encourage consumers to purchase its
 6 hardware rather than competing consoles like Microsoft Xbox.

7 244. Even other billion-dollar companies with popular PC games, similar to Epic, have
 8 been foreclosed from competing successfully against Valve in the market for PC game distribution.

9 245. EA created its Origin store and game launcher in 2011, allowing users to buy,
 10 download, and play games directly from EA, bypassing Valve's commission rate. It stopped
 11 releasing its games on Steam at that time. Despite the draw of its popular franchises such as FIFA,
 12 the Sims, and Battlefield, EA was unable to break through Valve's anticompetitive tactics in the
 13 PC game distribution market and returned its games to Steam in 2020 to "be where the players
 14 are."⁹⁷

15 246. Microsoft also attempted to challenge Valve's monopoly using its popular games
 16 and Windows operating system to attract users to its store. But it was likewise unable to make
 17 inroads into Steam's market dominance and began selling its PC games on Steam in 2019.⁹⁸

18 247. Ubisoft, publisher of blockbuster franchises such as Assassin's Creed, Tom
 19 Clancy's Rainbow Six Siege, and Anno, launched its Uplay gaming client and online store in 2009.

22 6466479/ (also noting that "Epic Games Store has made a habit of securing major triple-A and
 23 high-profile indie games away from Steam" which has led to "Steam users' harsh reactions to
 games leaving Steam for Epic and Valve's slow response on some of the review bombings").

24 ⁹⁷ Chaim Gartenberg, *EA games are returning to Steam along with the EA Access*
 25 *subscription service*, The Verge (Oct. 29, 2019), <https://www.theverge.com/2019/10/29/20937055/ea-games-steam-access-subscription-service-pc-storefront-jedi-fallen-order-sales>.

26 ⁹⁸ Nick Statt, *Microsoft will distribute more Xbox titles through Steam and finally support*
 27 *Win32 games*, The Verge (May 30, 2019), <https://www.theverge.com/2019/5/30/18645250/microsoft-xbox-game-studios-publishing-valve-steam-32-bit-windows>.

1 Though it has the ability to publish and sell games fully independently of Steam and Valve, Ubisoft
2 continues to sell its games on Steam because of Valve's monopolistic hold on the market.

3 248. Discord, a communication service popular among gamers, attempted to enter the
4 PC game distribution market in late 2018. It had an existing user base of millions of active PC
5 gamers and offered more favorable terms for developers. Within a year, Discord shut down both
6 the store and its monthly subscription service for PC games.

7 249. In a competitive market, Publishers may choose to offer lower prices to consumers
8 on competing stores but they could still earn more money from a greater number of transactions at
9 the lower retail prices given the other store's lower revenue share. Valve's revenue share
10 percentages would be forced down by competitive market pressure.

11 250. For example, assuming a Publisher could sell its game for \$30 on Steam and \$25
12 on the Microsoft Store, the revenue split would be \$21 / \$9 on Steam (70% / 30%) and \$22 / \$3
13 on Microsoft (88% / 12%), earning more money for the Publisher and costing the customer
14 significantly less. In this example, the consumer would save \$5, which would likely lead to
15 increased sales (and revenues) on the site offering the cheaper price. And the Publisher would
16 earn more revenue on each sale and more total revenue from a greater sales volume.

17 251. However, the SDA restrictions and Steam Key Rules require that Publishers offer
18 no worse than the same price on the Microsoft Store as they offer on Steam. Given Steam's market
19 dominance, Steam will get more sales than other stores when prices are equal, and its dominance
20 will continue.

21 252. Storefronts will only be able to attract a sufficient user base to become a real
22 competitor to Steam when they can offer a better price or better promotions, but Publishers are not
23 able to work with the other stores to offer better terms to consumers because of the price parity
24 and marketing restrictions MFN, enforced by Steam's retaliatory conduct.

25 253. The price parity and marketing restrictions MFN and Valve's related conduct
26 therefore prevent competition from other stores. Under normal market circumstances, Valve
27
28

1 would have to lower its revenue sharing rate (at all three tiers of sales) to compete with the lower
2 revenue sharing agreements offered by its competitors.

3 254. Consequently, Publishers pay a supracompetitive revenue share to Valve because
4 Valve prevents competition from other stores that would otherwise drive down its
5 supracompetitive revenue sharing rate.

6 255. Finally, consumers are harmed because Publishers are not able fully to invest in
7 game improvements, new games, and/or lower retail prices.

8 IX. CLASS ACTION ALLEGATIONS

9 256. Dark Catt brings this action on behalf of itself and all others similarly situated
10 pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) as representative of a Class
11 defined as follows:

12 All persons or entities in the United States that have contracted with Valve
13 Corporation to distribute a PC game via Steam and sold such game on or after April
14 27, 2017, and continuing through the present until the effects of its scheme are
eliminated (the “Class Period”). Excluded from the Class are (a) Defendant, its
subsidiaries, affiliate entities, and employees, and (b) the Court and its personnel.

15 257. The Class Members are so numerous that joinder is impracticable. Hundreds of
16 Publishers have sold their games on Steam during the Class Period and continue to sell their games
17 on Steam and on other stores using Steam keys.

18 258. The anticompetitive conduct of Valve alleged herein has imposed, and threatens to
19 continue to impose, a common antitrust injury on the Class Members.

20 259. The identity of all Class Members is known by Valve. Valve can identify the Class
21 Members via its internal business records, including, but not limited to, Class Members’ account,
22 Steam key usage, contractual, financial, publishing, and sales histories with Valve and Steam.

23 260. There are numerous questions of law and fact that are common to the Class and that
24 predominate over any issues affecting any individual Class Member, including *inter alia*:

25 a. Whether the restrictions Valve imposes on Publishers, including the
26 contractual restrictions outlined in its SDA and Steamworks Documentation, as interpreted and
27 enforced by Valve, are anticompetitive;

1 b. Whether Valve has substantial market power in the market for PC game
2 distribution in the United States and globally;

3 c. Whether Valve has unlawfully monopolized, or attempted to monopolize,
4 the PC game distribution market, including by way of contractual terms, policies, practices,
5 mandates, and restraints described herein;

6 d. Whether Valve has substantially foreclosed competition in the market for
7 PC game distribution in the United States and worldwide;

8 e. Whether Valve's scheme has permitted it to illegally acquire and/or
9 maintain its monopoly in the PC game distribution market;

10 f. Whether the conduct alleged herein artificially created, maintained,
11 preserved, or enhanced Valve's market power in the PC game distribution market;

12 g. Whether Valve's scheme has a legitimate procompetitive justification and,
13 if so, whether it is outweighed by the anticompetitive effects of its conduct, and whether there are
14 substantially less restrictive ways to achieve any supposed procompetitive purpose;

15 h. The operative time period and extent of Valve's antitrust violations and any
16 continuing effects;

17 i. Whether the conduct alleged herein caused damages to Class Members in
18 the form of paying a supracompetitive revenue share to Valve;

19 j. The amount of damages incurred by the Class because of Valve's conduct;
20 and

21 k. The nature and scope of injunctive and other equitable relief necessary to
22 restore a competitive market and protect the public interest.

23 261. Dark Catt's interests are typical of, and not antagonistic to, those of other or absent
24 Class Members, such that it can fairly and adequately represent and protect the interests of the
25 Class Members.

26 262. Dark Catt has retained counsel with substantial experience litigating complex
27 antitrust class actions.

263. Class treatment of Dark Catt's federal and state antitrust claims is a superior method for the fair and efficient adjudication of this controversy in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender.

264. Valve's relationships with Dark Catt and the Class have been substantially uniform in that Dark Catt paid Valve the supracompetitive revenue share (among other fees) and has been subjected to Valve's monopolistic tactics. Common questions of law and fact will predominate over any individual questions of law and fact for the Class.

265. Valve acts and continues to act on grounds generally applicable to the Class, thereby making appropriate final equitable and injunctive relief with respect to the Class as a whole.

266. Dark Catt knows of no difficulty likely to be encountered in the maintenance of this action as a class action under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3).

X. CLAIMS FOR RELIEF

COUNT ONE

Illegal Monopoly Maintenance in Violation of 15 U.S.C. § 2

267. Dark Catt repeats and incorporates each of the allegations contained in the paragraphs above as if fully set forth herein.

268. Valve, through its ownership and control of Steam, has a monopoly in the PC game distribution market and uses the Steam SDA and Steamworks Documentation and other conduct alleged herein to maintain its monopoly.

269. Valve, through its monopoly power and contracts, acts in an anticompetitive manner to control the price of games and DLC set by Publishers in the PC game distribution market and keep prices at an elevated and uniform level.

270. Valve's commission rate is substantially higher than it otherwise would be in a competitive PC game distribution market free from Valve's anticompetitive practices. Valve is

1 only able to maintain its supracompetitive rates due to the price parity and marketing restrictions
2 MFN and other exclusionary and anticompetitive behavior described herein.

3 271. A marketplace without the restrictions imposed by the SDA and Steam Key Rules
4 as interpreted and enforced by Valve would result in Steam lowering its revenue sharing rates to
5 compete with its rival stores, resulting in increased revenues for Publishers.

6 272. A marketplace without the restrictions imposed by the SDA and Steam Key Rules
7 as interpreted and enforced by Valve would result in rival stores using revenue sharing
8 percentages, marketing efforts, revenue guarantees, and development funds to compete for
9 Publishers' games and DLC, and in turn compete for consumers.

10 273. As discussed herein, the restrictions imposed by the SDA, Steam Key Rules, and
11 other conduct prevent competition on Valve's revenue sharing rates and other business terms with
12 Publishers, which would lower Steam's market share and Valve's profits. Valve's conduct
13 excludes rival storefronts (those in existence and potential new market entrants) from competing
14 on price and number of offerings, and is anticompetitive.

15 274. Dark Catt was injured in its business and property by paying a supracompetitive
16 revenue share to Valve for sales of its game on Steam.

17 275. Class Members were similarly harmed in their business or property as a direct result
18 of Valve's anticompetitive conduct. Due to the conduct described herein, they too paid a
19 supracompetitive revenue share to Valve.

20 276. Valve uses the SDA, Steam Key Rules, and other conduct alleged herein to illegally
21 maintain monopoly power and hinder competition in the PC game distribution market.

22 277. Every day Valve continues with its conduct described herein and the price parity
23 and marketing restrictions MFN remains in effect, Valve continues to violate Section 2 of the
24 Sherman Act.

COUNT TWO**Illegal Attempted Monopolization in Violation of 15 U.S.C. § 2**

278. Dark Catt repeats and incorporates each of the allegations contained in the paragraphs above as if fully set forth herein.

279. Valve, through its price parity and marketing restrictions MFN and other conduct alleged herein, acts in an anticompetitive and exclusionary manner to control the price of games and DLC set by Publishers throughout the PC game distribution market. Valve acts with the specific intent of monopolizing the PC game distribution market and maintaining its supracompetitive commission rate.

280. Through price parity and marketing restrictions MFN and other exclusionary and anticompetitive behavior described herein, Valve has a dangerous probability of success in monopolizing the PC game distribution market.

281. Valve's conduct has no legitimate business purpose but is designed to monopolize the PC game distribution market.

282. A marketplace without the restrictions imposed by the SDA and Steam Key Rules as interpreted and enforced by Valve and other limitations would force Valve to compete with rival stores on the terms they offer to Publishers to distribute PC games, and in turn compete for consumers.

283. Instead, Valve's conduct excludes current and potential future rival storefronts from competing on price, quantity, and quality of PC games, which is anticompetitive. Valve's conduct is intended to establish and maintain Steam's monopoly in PC game distribution.

284. Dark Catt was injured in its business and property by paying a supracompetitive revenue share to Valve for sales of its game on Steam.

285. Class Members were similarly harmed in their business or property as a direct result of Valve's anticompetitive conduct in attempting to monopolize the PC game distribution market. The conduct described herein caused Class Members to pay a supracompetitive revenue share to Valve.

1 286. Every day Valve continues with its conduct described herein and the price parity
2 and marketing restrictions MFN remains in effect, Valve continues to attempt to monopolize the
3 global PC game distribution market in violation of Section 2 of the Sherman Act.

4 **COUNT THREE**

5 **Violation of Washington Consumer Protection Act (RCW 19.86)**

6 287. Dark Catt repeats and incorporates each of the allegations contained in the
7 paragraphs above as if fully set forth herein.

8 288. Valve's conduct alleged herein, including its contractual terms, exercise of its
9 market power, and anticompetitive use of Steam keys, constitutes unfair or deceptive acts or
10 practices.

11 289. As alleged herein, Valve has attempted to monopolize or has monopolized the
12 worldwide PC game distribution market. This conduct affects the trade or commerce of
13 Washington, including because Valve has its principal place of business in Washington and does
14 business with Publishers within Washington.

15 290. A marketplace without the restrictions imposed by the SDA and Steam Key Rules
16 as interpreted and enforced by Valve and other limitations would force Valve to compete with
17 rival stores on the terms they offer to Publishers to distribute PC games, and in turn compete for
18 consumers.

19 291. Valve's conduct causes Publishers to pay a supracompetitive commission rate to
20 Valve and deprives game purchasers of a competitive marketplace with more innovative offerings
21 and potentially lower prices. Valve's conduct is accordingly against the public interest. The
22 exclusion of rival storefronts harms gaming consumers by limiting their options of where to
23 purchase PC games and keeping the retail prices they pay above the competitive level and/or
24 keeping the quality and quantity of games available below the competitive level.

25 292. Dark Catt was injured in its business and property by paying a supracompetitive
26 revenue share to Valve for sales of its game on Steam.

- 1 h. That Dark Catt and the Class be awarded pre-judgment and post-judgment interest as
2 allowed by law on all sums awarded;
- 3 i. That the Court adjudge and declare that Valve's conduct violates the laws set forth
4 herein; and
- 5 j. That the Court award such other and further relief as the Court may deem equitable,
6 just and proper, or the law may allow.

7 **XII. JURY DEMAND**

8 Pursuant to Fed. R. Civ. P. 38(b), Dark Catt demands a trial by jury of all issues properly
9 triable to a jury in this case.

10 Dated: December 20, 2021

s/ Stephanie L. Jensen

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